

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of Earliest Event Reported): November 10, 2022**

**FS Credit Real Estate Income Trust, Inc.**

(Exact name of Registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction  
of incorporation)

**000-56163**  
(Commission  
File Number)

**81-4446064**  
(I.R.S. Employer  
Identification No.)

**201 Rouse Boulevard**  
**Philadelphia, Pennsylvania**  
(Address of principal executive offices)

**19112**  
(Zip Code)

**Registrant's telephone number, including area code: (215) 495-1150**

**None**  
(Former Name or Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Exchange Act: None.

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01 Entry into a Material Definitive Agreement.****Master Repurchase Agreement and Securities Contract**

On November 10, 2022, FS CREIT Finance NTX-1 LLC (“NTX-1”), an indirect wholly owned special-purpose financing subsidiary of FS Credit Real Estate Income Trust, Inc. (“FS CREIT”), entered into a Master Repurchase Agreement and Securities Contract (the “Repurchase Agreement,” and together with the related transaction documents, the “Facility”), as seller, with Natixis, New York Branch, as buyer (the “Buyer”), to finance the acquisition and origination of (i) whole, performing mortgage loans and mortgage notes secured by a first lien on multifamily, retail, office, hotel, self-storage or industrial property or mixed-use property and (ii) pari passu participation interests in such performing mortgage loans (collectively, “Eligible Assets”).

The Facility is uncommitted, so the Buyer has no obligation to enter into a transaction under the Facility to finance Eligible Assets. The initial maximum amount of financing available under the Facility is \$187.5 million. Buyer may elect to increase the maximum amount of financing available to no more than \$250 million in its discretion.

The initial availability period of the Facility (during which financing under the Facility may be used for acquisition and origination of new assets) is two years. NTX-1 may request to extend the availability period for a one-year term extension, so long as certain conditions are met.

In connection with the Repurchase Agreement, FS CREIT entered into a Guaranty (the “Guaranty”) pursuant to which FS CREIT guarantees 25% of NTX-1’s obligations under the Repurchase Agreement, subject to limitations specified therein. The Guaranty may become full recourse to FS CREIT upon the occurrence of certain events, including willful bad acts by FS CREIT or NTX-1.

The Repurchase Agreement and Guaranty contain representations, warranties, covenants, events of default and indemnities that are customary for agreements of their type. In addition, FS CREIT is required (i) to maintain its adjusted tangible net worth at an amount not less than 75% of the net cash proceeds of any equity issuance by FS CREIT minus 75% of the amounts expended for equity redemptions or repurchases by FS CREIT; (ii) to maintain an EBITDA to interest expense ratio not less than 1.50 to 1.00; (iii) to maintain a total indebtedness to tangible net worth ratio of less than 3.50 to 1.00; and (iv) to maintain minimum liquidity plus net available capital commitments at not less than the greater of (x) \$15,000,000 and (y) 5% of the amount outstanding under the Facility.

Each transaction under the Facility to finance Eligible Assets will have its own specific terms, such as identification of the assets subject to the transaction, sale price, repurchase price and rate. In addition, any term of the Facility or the Guaranty may be amended in connection with any transaction.

The material terms of the agreements described above are qualified in their entirety by the agreement attached as Exhibits 2.1 and 2.2 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

**Item 9.01 Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
2.1	<a href="#">Master Repurchase Agreement and Securities Contract Agreement dated as of November 10, 2022 between FS CREIT Finance NTX-1 LLC, and Natixis, New York Branch.</a>
2.2	<a href="#">Guaranty dated as of November 10, 2022 made by FS Credit Real Estate Income Trust, Inc. in favor of Natixis, New York Branch.</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FS Credit Real Estate Income Trust, Inc.

Date: November 16, 2022

By: /s/ Stephen S. Sypherd  
Stephen S. Sypherd  
Vice President, Treasurer & Secretary

MASTER REPURCHASE AGREEMENT AND SECURITIES CONTRACT

Dated as of November 10, 2022

by and between

FS CREIT FINANCE NTX-1 LLC,

as Seller,

and

NATIXIS, NEW YORK BRANCH,

as Buyer

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**MASTER REPURCHASE AGREEMENT AND SECURITIES CONTRACT**, dated as of November 10, 2022 (including any applicable annexes, exhibits and schedules hereto, and as may be amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made by and between **FS CREIT FINANCE NTX-1 LLC**, a Delaware limited liability company, as Seller, and **NATIXIS, NEW YORK BRANCH**, as Buyer. Seller and Buyer (each a "Party") hereby agree as follows.

## 1. APPLICABILITY

Subject to the terms and conditions of the Program Documents, from time to time during the Funding Period and at the request of Seller, the Parties may enter into transactions (each a "Transaction") in which Seller agrees to sell, transfer and assign to Buyer certain Eligible Assets and all related rights in and interests related to such Eligible Assets on a servicing released basis, against the transfer of funds by Buyer representing the Purchase Price for such Eligible Assets, with a simultaneous agreement by Buyer to transfer to Seller and Seller to repurchase such Eligible Assets in a repurchase transaction at a date not later than the Facility Termination Date, against the transfer of funds by Seller representing the Repurchase Price for such Eligible Assets.

## 2. DEFINITIONS

"1933 Act" shall mean the Securities Act of 1933, as amended.

"1934 Act" shall have the meaning specified in Section 23(a) of this Agreement.

"A-Note" shall mean any Mortgage Note secured by a Mortgage that also secures one or more other Mortgage Notes that are *pari passu* in right of payment to such A-Note pursuant to the related Co-Lender Agreement.

"Accelerated Repurchase Date" shall have the meaning specified in Section 14(b)(i) of this Agreement.

"Accepted Servicing Practices" shall have the meaning given to such term (or any similar or substitute term) in the related Servicing Agreement.

"Account Bank" shall mean U.S. Bank National Association, or any successor account bank appointed by Buyer with the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed).

"Affected Financial Institution" shall mean (i) any EEA Financial Institution or (ii) any UK Financial Institution.

"Affiliate" shall mean, when used with respect to any specified Person, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person.



“Affiliated Originator” shall mean FS CREIT Originator LLC and such other originators that are Affiliates of Seller or Guarantor, as may be approved by Buyer, in its sole and absolute discretion, from time to time.

“Agreement” shall have the meaning specified in the introductory paragraph hereto.

“Annual Debt Service” shall mean, with respect to any Purchased Asset, the current annualized debt service payable on such Purchased Asset as of the date of determination.

“Anti-Corruption Rules” shall mean any law or regulation aiming at preventing and/or sanctioning corruption, influence peddling or bribery including the Sapin II Law of France 2016, as well as the United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act of 1977.

“Applicable Spread” shall have the meaning assigned to such term in the Fee Letter.

“Appraisal” shall mean a FIRREA-compliant appraisal of the related Mortgaged Property from an Independent Appraiser addressed to and reasonably satisfactory to Buyer.

“Appraised Value” shall mean the as-is value of the underlying Mortgaged Property relating to a Purchased Asset, as determined by Buyer based on the most recent Appraisal delivered by Seller or obtained by Buyer pursuant to the terms of this Agreement.

“Approved Exception Report” shall mean, with respect to any Purchased Asset, any Exception Report furnished by Seller to Buyer and approved by Buyer in writing (which may be by electronic mail) prior to the Purchase Date of the related Transaction.

“Assignee” shall have the meaning specified in Section 19(c) of this Agreement.

“Assignment of Leases” shall mean, with respect to any Mortgaged Property, an assignment of leases under the related Mortgage, or a separate assignment of leases, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein such Mortgaged Property is located to reflect the assignment of leases.

“Assignment of Mortgage” shall mean, with respect to any Mortgage, an assignment of the mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment and pledge of the Mortgage, subject to the terms, covenants and provisions of this Agreement.

“Authorized Representative of Seller” shall mean each of the natural persons listed on Exhibit C, as such Exhibit C may be updated from time to time by Seller by written notice to Buyer.

“Bail-In Action” shall mean the exercise of any Write-Down and Conversion Powers by (i) the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution or (ii) the applicable UK Resolution Authority in respect of any liability of a UK Financial Institution.

“Bail-In Legislation” shall mean, (i) with respect to any EEA Member Country implementing Article 55 of the Bank Recovery and Resolution Directive, the implementing law for such EEA Member Country from time to time, which is described in the EU Bail-In Legislation Schedule and (ii) the then applicable Commission Delegated Regulation (if any) supplementing the Bank Recovery and Resolution Directive in relation to Article 55 thereof and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank Recovery and Resolution Directive” shall mean Directive 2014/59/EU of the European Parliament and of the Council of the European Union.

“Bankruptcy Code” shall mean Title 11 of the United States Code, entitled “Bankruptcy”, as amended from time to time, and any successor statute or statutes.

“Base Rate” shall mean, with respect to each Pricing Rate Period, the Prime Rate, determined as of the Pricing Rate Determination Date related to such Pricing Rate Period.

“Base Rate Spread” shall mean, in connection with any conversion of a Transaction from (i) a SOFR Transaction to a Base Rate Transaction, the difference (expressed as the number of basis points) between (a) the applicable SOFR Index plus the Applicable Spread on the date the applicable SOFR Index was last applicable to such Transaction minus (b) the Base Rate on the date that the applicable SOFR Index was last applicable to such Transaction; or (ii) a Benchmark Replacement Transaction to a Base Rate Transaction, the difference (expressed as the number of basis points) between (1) the Benchmark Replacement plus the Applicable Spread on the date that the Benchmark Replacement was last applicable to such Transaction minus (2) the Base Rate on the date that the Unadjusted Benchmark Replacement was last applicable to such Transaction; provided that, in either (i) or (ii), if such difference is a negative number, then the Base Rate Spread shall be zero.

“Base Rate Transaction” shall mean, with respect to any Pricing Rate Period, any Transaction with respect to which the Pricing Rate for such Pricing Rate Period is determined with reference to the Base Rate.

“Benchmark” shall mean, initially, the SOFR Index; provided that, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the SOFR Index or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to clause (i) of Section 3(f) hereof.

“Benchmark Replacement” shall mean, for any Pricing Rate Period, the first alternative set forth in the order below that can be determined by the Buyer as of the Benchmark Replacement Date:

(i) SOFR Average; or

(ii) the sum of: (a) the alternate rate of interest that has been selected by Buyer and Seller as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (x) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body at such time or (y) any evolving or then-prevailing market convention for determining a rate of interest as a replacement for the then-current Benchmark for U.S. dollar-denominated floating rate credit facilities at such time and (b) the Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to this definition would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

“Benchmark Replacement Adjustment” shall mean, for any Pricing Rate Period, the spread adjustment, or method for calculating or determining such spread adjustment (which may be a positive or negative value or zero) that has been selected by Buyer and Seller for the applicable Corresponding Tenor giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body at such time or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate credit facilities at such time.

“Benchmark Replacement Conforming Changes” shall mean, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Pricing Rate Period,” “Business Day,” “Pricing Rate Determination Date,” “Remittance Date” timing and frequency of determining rates and making payments of interest and other administrative matters) that Buyer decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Buyer in a manner substantially consistent with market practice and consistent with the changes then being used by Buyer for substantially all of its customers on repurchase facilities and/or credit facilities similar to this Agreement (or, if Buyer decides that adoption of any portion of such market practice is not administratively feasible or if Buyer determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as Buyer decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” shall mean the earliest to occur of the following events with respect to the then-current Benchmark:

(i) in the case of clause (i) or (ii) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or

(ii) in the case of clause (iii) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Replacement Transaction” shall mean, with respect to any Pricing Rate Period, any Transaction with respect to which the Pricing Rate for such Pricing Rate Period is determined by reference to the Benchmark Replacement.

“Benchmark Transition Event” shall mean the occurrence of one or more of the following events with respect to the then-current Benchmark:

(i) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

(ii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;

(iii) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative; or

(iv) adequate and reasonable means do not exist for ascertaining Term SOFR (which reasonable determination by Buyer shall be conclusive and binding in the absence of manifest error).

For the avoidance of doubt, a Term SOFR Transition Event shall not be deemed a Benchmark Transition Event.

“Benchmark Unavailability Period” has the meaning assigned to such term in Section 3(f)(ii) of this Agreement.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership required by 31 C.F.R. § 1010.230 in a form satisfactory to Buyer.

“Beneficial Ownership Regulation” shall mean 31 C.F.R § 1010.230.

“BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“Business Day” shall mean any day (i) on which Account Bank is open to conduct its regular banking business and (ii) other than (a) a Saturday, Sunday or a public holiday or (b) a day in which the New York Stock Exchange, the Federal Reserve Bank of New York, banking and savings and loan institutions in the state of Buyer’s, Seller’s, Custodian’s or Servicer’s principal place of business, the State of North Carolina or the State of New York are authorized or obligated by law, regulation or executive order to be closed. When used with respect to a Pricing Rate Determination Date, “Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banks in London are authorized or required to be closed.

“Buyer” shall mean Natixis, New York Branch, or any successor or permitted assign.

“Buyer Future Funding Eligible Asset” shall mean any Future Funding Eligible Asset designated as a Buyer Future Funding Eligible Asset in the related Confirmation, as determined by Buyer as of the related Purchase Date in its sole and absolute discretion.

“Capital Stock” shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent equity ownership interests in a Person that is not a corporation, including, without limitation, any and all member or other equivalent interests in any limited liability company, any and all partnership or other equivalent interests in any partnership or limited partnership, and any and all warrants or options to purchase any of the foregoing.

“Change of Control” shall mean, without the prior written approval of Buyer, the occurrence of any of the following events: (a) the consummation of a merger or consolidation of Guarantor with or into another entity or any other reorganization of Guarantor if Guarantor is not the surviving entity following such merger, consolidation or reorganization, (b) Guarantor ceases to own and Control, of record and beneficially, directly or indirectly, 100% of the outstanding Capital Stock of Seller or Pledgor, (c) Rialto Capital Management, LLC is no longer a party to a sub-advisory agreement with FS Real Estate Advisor, LLC, (d) FS Real Estate Advisor, LLC is no longer party to an advisory agreement with Guarantor, (e) Guarantor and Seller are no longer under common Control or (f) any Person becomes an owner, of record and beneficially, directly or indirectly, of twenty percent (20%) or more of the outstanding Capital Stock of Seller or Guarantor and has not completed Buyer’s “Know Your Customer” process.

“Closing Date” shall mean the date first written above.

“Co-Lender Agreement” shall mean, with respect to any Whole Loan consisting of one or more A-Notes, the related co-lender agreement or similar agreement governing the rights and obligations of the holders of such A-Notes.

“Code” shall mean the U.S. Internal Revenue Code of 1986, as amended.

“Collateral” shall mean all of the property pledged pursuant to Sections 6(a) and 6(d) of this Agreement.

“Collection Account” shall mean, with respect to each Purchased Asset, any deposit account, cash management account, blocked account, clearing account or other account established pursuant to the applicable Collection Account Control Agreements and other Purchased Asset Documents for the receipt, holding or administration of Income on such Purchased Asset.

“Collection Account Bank” shall mean, with respect to each Collection Account, the depository at which such Collection Account is established, as approved by Buyer.

“Collection Account Control Agreement” shall mean, with respect to each Collection Account, any control agreement, cash management agreement, account agreement or other Purchased Asset Document that governs the administration and/or control of such Collection Account or the Mortgagor’s or a Servicer’s obligation to deposit sums in such Collection Account.

“Companion Interest” shall mean, with respect to any Eligible Participation Interest, any other participation interest in the same Whole Loan or A-Note as such Eligible Participation Interest.

“Concentration Limit Test” shall have the meaning assigned to such term in the Fee Letter.

“Confirmation” shall have the meaning specified in Section 3(b) of this Agreement.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” shall mean, with respect to any Person, the direct or indirect power to direct or cause the direction of the management or policies of such Person, including investment decisions, whether through the ability to exercise voting power, by contract or otherwise. “Controlling,” “Controlled” and “under common Control” have correlative meanings.

“Controlling A-Note” shall mean, with respect to any Whole Loan consisting of one or more A-Notes, the controlling A-Note under and as described in the related Co-Lender Agreement.

“Controlling Participation” shall mean, with respect to any Whole Loan or A-Note, the participation interest that entitles the holder thereof to control servicing and other decisions with respect to such Whole Loan or A-Note pursuant to the related Participation Agreement.

“Corresponding Tenor” shall mean, with respect to a Benchmark Replacement, a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Pricing Rate Period with respect to the then-current Benchmark.

“Credit Event” shall mean the occurrence of any of the following events or any similar event, occurrence or condition: (i) a monetary or material non-monetary default under the related Purchased Asset Documents for any Purchased Asset has occurred and is continuing beyond any applicable grace period; (ii) any material breach of any of the representations and warranties set forth in Exhibit G-1 or Exhibit G-2, as applicable, as modified by any Approved

Exception Report (or otherwise waived by Buyer in its sole discretion) has occurred and is continuing beyond any applicable grace period set forth in the Program Documents; (iii) a material adverse change in the cash flows or financial condition of any related Mortgaged Property or any guarantor; (iv) the loss of any security interest (or the priority thereof), or the loss of any enforcement rights or remedies, in each case, under any of this Agreement or any of the documents executed in connection with this Agreement or any Purchased Asset or (v) a Material Adverse Change.

“Custodial Agreement” shall mean the Custodial Agreement, dated as of the date hereof, by and among Custodian, Seller and Buyer, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Custodial Failure Repurchase Date” shall mean, with respect to any Purchased Asset, the date that is two (2) Business Days following any date that any Purchased Asset Document for such Purchased Asset ceases to be in possession of the Custodian beyond the expiration of any applicable period identified in the Custodial Agreement.

“Custodian” shall mean Computershare Trust Company, N.A., or any successor Custodian appointed by Buyer with the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed).

“Debt Yield” shall mean, with respect to any Purchased Asset, the debt yield as calculated by Buyer, which calculation may include, at Buyer’s option, either (1) as-is net operating income, as determined by Buyer in its sole but good faith discretion, or (2) the underwriting of future stabilized operations and reserves, if any, maintained in connection with such Purchased Asset; provided, however, that if Buyer included such future stabilized underwriting and/or reserves in its calculation of Debt Yield in connection with the purchase of such Purchased Asset, any subsequent calculation of Debt Yield with regard to such Purchased Asset shall include such future stabilized underwriting and/or reserves, only to the extent that such assumptions regarding stabilization continue to be appropriate and true as determined by Buyer.

“Debt Yield Test” shall have the meaning assigned to such term in the Fee Letter.

“Default” shall mean any event which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Default Rate” shall have the meaning assigned to such term in the Fee Letter.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulted Asset” shall mean any Purchased Asset (i) that is thirty (30) or more days (or, in the case of payments due at maturity, one (1) day) delinquent in the payment of principal, interest, fees, distributions or any other amounts payable under the related Purchased Asset Documents, (ii) for which there is any other event of default under the related Purchased Asset Documents beyond any applicable notice or cure period, (iii) as to whose Mortgagor, guarantor or Affiliated Originator an Insolvency Event has occurred, or (iv) for which Seller or the applicable Servicer has received notice of the foreclosure or proposed foreclosure of any Lien on the related Mortgaged Property.

“Defaulted Asset Repurchase Date” shall mean, with respect to any Purchased Asset, the date that is five (5) Business Days following any date such Purchased Asset becomes a Defaulted Asset.

“Delaware LLC Act” shall mean Chapter 18 of the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq., as amended.

“Delaware Limited Partnership Act” shall mean Chapter 17 of Limited Partnerships, 6 Del. C. §§ 17-101 et seq., as amended.

“Diligence Material” shall mean, collectively, (i) the Underwriting/Due Diligence Package furnished by Seller to Buyer and (ii) any other diligence materials delivered by Seller to Buyer in connection with Buyer’s review of any New Asset, whether pursuant to a Supplemental Due Diligence List or otherwise.

“Disposition Payment” shall mean, with respect to any Purchased Asset, any payment received by Seller representing all or any portion of a deposit or sales proceeds received by the related Mortgagor with respect to the related Mortgaged Property in connection with the sale or disposition thereof.

“Disqualified Institution” shall mean each institution listed on Exhibit J.

“Division” shall mean, with respect to any limited liability company or limited partnership organized under the laws of the State of Delaware, any (a) division of such Person into two or more Persons (whether or not the original Person survives such division) or (b) creation, or reorganization into, one or more series, in each case, as contemplated under the laws of the State of Delaware, including, without limitation, Section 18-217 of the Delaware LLC Act or Section 17-220 of the Delaware Limited Partnership Act.

“Dollars” and “\$” shall mean lawful money of the United States of America.

“E-Sign” shall mean the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq.*

“Early Facility Termination Date” shall have the meaning specified in Section 3(e) of this Agreement.

“Early Repurchase Date” shall have the meaning specified in Section 3(c)(ii) of this Agreement.

“Early Repurchase Purchased Asset” shall have the meaning specified in Section 3(c)(ii) of this Agreement.



“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“EEA Resolution Authority” shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any Affected Financial Institution.

“Eligibility Repurchase Date” shall mean, with respect to any Purchased Asset, the date that is five (5) Business Days following any date such Purchased Asset first ceases to satisfy the definition of “Eligible Asset”.

“Eligible Asset” shall mean (a) any Whole Loan or one or more A-Notes that satisfies each of the following criteria:

- (i) that, as of the Purchase Date, has been approved as a Purchased Asset by Buyer in its sole and absolute discretion;
- (ii) that is secured by a first priority perfected security interest in a Mortgaged Property, which as of the Purchase Date, is of one of the following property types: multifamily, mixed-use, retail, office, parking, hotel, manufactured housing, industrial or self-storage;
- (iii) with respect to which the representations and warranties on Exhibit G-1 are true and correct in all material respects;
- (iv) that is not a Defaulted Asset;
- (v) as of the Purchase Date, satisfies the Debt Yield Test;
- (vi) as of the Purchase Date, the Mortgaged Property relating thereto is located in one of the top 50 “Metropolitan Statistical Areas” of the United States, whose Mortgagors are commercial entities domiciled in the United States, and which requires monthly payments based on one-month SOFR and all obligations thereunder and under the Purchased Asset Documents to be denominated and payable in Dollars;
- (vii) whose Mortgagors are not Embargoed Persons or listed on any Government List;
- (viii) has a final maturity date no later than five (5) years and one (1) month from the date that such Whole Loan or A-Note becomes a Purchased Asset;
- (ix) as of the Purchase Date, satisfies the LTV Test;

(x) other than the Purchased Assets purchased on the Closing Date, that has been originated no more than three (3) months prior to the related Purchase Date;

(xi) that does not cause a breach of the Concentration Limit Test;

(xii) as of the Purchase Date, that has an outstanding principal balance of no less than \$6,000,000;

(xiii) for which the related Mortgagor has entered into an interest rate protection agreement to provide protection against fluctuations in interest rates; and

(xiv) with respect to each Eligible Non-Controlling A-Note, for which Seller has provided evidence acceptable to Buyer that Seller has delivered written notice to the other A-Note holders pursuant to the terms of the related Co-Lender Agreement that such Eligible Non-Controlling A-Note has been transferred to Seller and sold in a Transaction, which notice to the applicable A-Note holder shall include a direction to remit all Income payable with respect to such Eligible Non-Controlling A-Note to the Repo Collection Account; or

(b) an Eligible Participation Interest with respect to which (i) the related Whole Loan or A-Note satisfies the criteria set forth in clause (a) above and (ii) the representations and warranties on Exhibit G-2 are true and correct in all material respects;

provided, that notwithstanding the failure of a Purchased Asset to conform to the requirements of this definition, Buyer may, subject to such terms, conditions and requirements and Purchase Price adjustments as Buyer may require, designate in writing any such non-conforming Purchased Asset as an Eligible Asset (each such non-conforming Purchased Asset, a "Waived Eligibility Criteria Asset"), which designation (1) may include a temporary or permanent waiver of one or more Eligible Asset requirements and (2) shall not be deemed a waiver of the requirement that all other Purchased Assets must be Eligible Assets (including any Purchased Assets that are similar or identical to the Purchased Asset subject to the waiver). Any criteria specified above that is waived in accordance with the foregoing proviso is referred to herein as a "Waived Eligibility Criteria".

"Eligible Non-Controlling A-Note" shall have the meaning assigned to such term in the Fee Letter.

"Eligible Participation Interest" shall mean a performing *pari passu* participation interest that does not entitle the holder thereof to control servicing and other decisions with respect to the related Whole Loan or A-Note pursuant to the related Participation Agreement and is evidenced by a Participation Certificate retained by Seller in connection with a Whole Loan or A-Note previously subject to a Transaction hereunder (and the Controlling Participation in such Whole Loan or A-Note is held by a securitization trust (or trustee on its behalf) in connection with a capital markets transaction executed by or on behalf of any Guarantor or any of Guarantors' Affiliates) that satisfies each of the following criteria:

- (i) that, as of the Purchase Date, has been approved as a Purchased Asset by Buyer in its sole and absolute discretion;
- (ii) that is not a Defaulted Asset;
- (iii) relates to a Whole Loan or A-Note that has a final maturity date no later than five (5) years and one (1) month from the date that such Eligible Participation Interest becomes a Purchased Asset;
- (iv) that does not cause a breach of the Concentration Limit Test;
- (v) that, as of the Purchase Date, represents a participating interest in a Whole Loan or A-Note that has an outstanding principal balance of no less than \$6,000,000;
- (vi) for which Seller has provided evidence acceptable to Buyer that Seller has delivered written notice to the other participation holders pursuant to the terms of the related Participation Agreement and the Participation Servicer that such Eligible Participation Interest has been transferred to Seller and sold in a Transaction, which notice to the Participation Servicer shall include a direction to remit all Income payable with respect to such Eligible Participation Interest to the Repo Collection Account;
- (vii) no action, inaction or decision has occurred with respect to the related Whole Loan or A-Note that would constitute a Material Modification; and
- (viii) the Eligible Participation Interest Mandatory Repurchase Date has not occurred with respect to such Eligible Participation Interest.

“Eligible Participation Interest Mandatory Repurchase Date” shall mean, with respect to any Eligible Participation Interest, the earliest of (i) the first anniversary of the related Purchase Date, (ii) the settlement date of the next CLO securitization issued after the related Purchase Date by an Affiliate of Seller and (iii) the Repurchase Date.

“Embargoed Person” shall have the meaning specified in Section 12(o)(ii) of this Agreement.

“Environmental Law” shall mean, any federal, state, foreign or local statute, law, rule, regulation, ordinance, code, guideline, written policy and rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; RCRA; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning the Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“ERISA Affiliate” shall mean any corporation or trade or business that is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which Seller is a member and (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c) (11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which Seller is, or at any relevant time was, a member.

“ESA” shall have the meaning specified in Exhibit G-1.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” shall have the meaning specified in Section 14(a) of this Agreement.

“Exception Report” shall mean a written list prepared by Seller and delivered to Buyer prior to the Purchase Date or Future Funding with respect to any Purchased Asset, specifying in reasonable detail, all exceptions of which Seller has knowledge to the representations and warranties set forth in Exhibit G-1 or Exhibit G-2, as applicable, relating to such Purchased Asset.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to Buyer or required to be withheld or deducted from a payment to Buyer: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of Buyer being organized under the laws of, or having its principal office or the office from which it books the Transactions located in, the jurisdiction imposing such Taxes (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Buyer with respect to an applicable interest in the Program Documents or Transactions pursuant to a law in effect on the date on which Buyer (A) acquires an interest in the Transactions or (B) changes the office from which it books the Transactions, except in each case to the extent that, pursuant to Section 29 of this Agreement, amounts with respect to such Taxes were payable either to Buyer’s assignor immediately before Buyer became a party hereto or to Buyer immediately before it changed its lending office, (iii) Taxes attributable to Buyer’s failure to comply with Section 29(e) of this Agreement, and (iv) any U.S. withholding Taxes imposed under FATCA.

“Extension Fee” shall have the meaning assigned to such term in the Fee Letter.

“Exit Fee” shall have the meaning assigned to such term in the Fee Letter.

“Facility Amount” shall have the meaning assigned to such term in the Fee Letter.

“Facility Termination Date” shall mean the earliest of (i) the date that occurs on the one (1) year anniversary of the Funding Expiration Date (or if such day is not a Business Day, the next succeeding Business Day), as such date may be extended in accordance with Section 3(d), (ii) any Accelerated Repurchase Date and (iii) any date on which the Facility Termination Date shall otherwise occur in accordance with the Program Documents or Requirements of Law.

“FATCA” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“FATF” shall have the meaning specified in Section 12(o)(iv) of this Agreement.

“FDIA” shall have the meaning specified in Section 22(b) of this Agreement.

“FDICIA” shall have the meaning specified in Section 22(c) of this Agreement.

“Federal Reserve Bank of New York’s Website” shall mean, the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“Fee Letter” shall mean the Fee Letter, dated as of the date hereof, between Buyer and Seller, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“FIRREA” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

“Fitch” shall mean Fitch Ratings, Inc. or its successor in interest.

“Foreign Buyer” shall mean Buyer, and any Assignee that is not a U.S. Buyer.

“Funding Expiration Date” shall mean the earlier of (i) November 10, 2024, as such date may be extended in accordance with Section 3(d) and (ii) the occurrence of a Funding Termination Event.

“Funding Period” shall mean the period from the Closing Date to and including the earlier of (i) the Funding Expiration Date and (ii) the Facility Termination Date.

“Funding Period Extension Conditions” shall have the meaning specified in Section 3(d) of this Agreement.

“Funding Termination Event” shall mean the occurrence of one or more of the following events: (i) a Material Adverse Change, (ii) a Market Material Adverse Change or (iii) an Event of Default.

“Future Funding” shall mean any additional advance under a Future Funding Eligible Asset that is funded by Seller.

“Future Funding Eligible Asset” shall mean, any Eligible Asset, with respect to which less than the full principal amount is funded at origination and Seller is obligated, subject to the satisfaction of certain conditions precedent under the related Purchased Asset Documents, to make additional advances to the Mortgagor. For the avoidance of doubt, Seller shall at all times remain solely liable for any additional advances required to be made in connection with any Future Funding Eligible Asset and Buyer shall be under no obligation to make any additional advances under a Future Funding Eligible Asset, unless such Future Funding Eligible Asset is designated as a Buyer Future Funding Eligible Asset in Buyer’s sole and absolute discretion.

“Future Funding Financing Capacity” shall mean, for any Purchased Asset as of any date of determination, the excess of (i) the Hypothetical Purchase Price of such Purchased Asset (considering the amount of additional principal advanced or to be advanced) by Seller under such Purchased Asset, over (ii) the Purchase Price of such Purchased Asset as of such date of determination. Future Funding Financing Capacity may exist for a Purchased Asset that is a Future Funding Eligible Asset as a result of an additional advance made by Seller (or to be made with additional Purchase Price as contemplated by the last paragraph of Section 3(b)) to the Mortgagor thereunder in accordance with the terms of such Future Funding Eligible Asset.

“GAAP” shall mean United States generally accepted accounting principles consistently applied as in effect from time to time.

“Government List” shall have the meaning set forth in Section 12(o)(iii) of this Agreement.

“Governmental Authority” shall mean any national or federal government, any state, regional, local or other political subdivision thereof with jurisdiction and any Person with jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Ground Lease” shall mean a ground lease containing the following terms and conditions: (i) a remaining term (exclusive of any unexercised extension options) of thirty (30) years or more from the Purchase Date of the related Purchased Asset, (ii) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor or with such consent given, (iii) the obligation of the lessor to give the holder of any mortgage lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so, (iv) reasonable transferability of the lessee’s interest under such lease, including ability to sublease and (v) such other rights customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease.

“Guarantor” shall mean, FS Credit Real Estate Income Trust, Inc., a Maryland corporation.

“Guaranty” shall mean the Guaranty, dated as of the date hereof, made by Guarantor in favor of Buyer, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Material” shall mean any substance defined, listed, or regulated as a “hazardous substance,” “toxic substance,” “hazardous waste,” “dangerous preparation”, “dangerous substance” or any other term of similar import under any Environmental Law.

“Hotel Purchased Assets” shall mean any Purchased Assets secured by Mortgaged Properties that are hotel properties.

“Hypothetical Purchase Price” shall mean, with respect to any Purchased Asset on any date of determination, the Purchase Price that would be paid by Buyer to Seller with respect to such Purchased Asset if such Purchased Asset was transferred by Seller to Buyer on such date, which Purchase Price shall be determined by Buyer in its sole and absolute discretion.

“Income” shall mean with respect to any Purchased Asset, all of the following (in each case with respect to the entire par amount of the related Whole Loan (or in the case of an A-Note or Eligible Participation Interest, the entire par amount of such A-Note or Eligible Participation Interest, as applicable) represented by such Purchased Asset and not just with respect to the portion of the par amount represented by the Purchase Price advanced against such Purchased Asset): all Principal Payments, Disposition Payments, interest payments and all other income, distributions, receipts, payments, collections, prepayments, recoveries, proceeds (including insurance and condemnation proceeds) and other payments or amounts of any kind paid, received, collected, recovered or distributed on, in connection with or in respect of such Purchased Asset, including Principal Payments, interest payments, principal and interest payments, prepayment fees, extension fees, exit fees, defeasance fees, transfer fees, make whole fees, late charges, late fees and all other fees or charges of any kind or nature, premiums, yield maintenance charges, penalties, default interest, dividends, gains, receipts, allocations, rents, interests, profits, payments in kind, returns or repayment of contributions, net sale, foreclosure, liquidation, securitization or other disposition proceeds, insurance payments, settlements and proceeds; provided, that any amounts that under the applicable Purchased Asset Documents are required to be deposited into and held in escrow or reserve to be used for a specific purpose, such as taxes and insurance, shall not be included in the term “Income” unless and until (i) an event of default exists under such Purchased Asset Documents, (ii) the holder of the related Purchased Asset has exercised or is entitled to exercise rights and remedies with respect to such amounts, (iii) such amounts are no longer required to be held for such purpose under such Purchased Asset Documents, or (iv) such amounts may be applied to all or a portion of the outstanding indebtedness under such Purchased Asset Documents.

“Indemnified Amounts” shall have the meaning specified in Section 26 of this Agreement.

“Indemnified Parties” shall have the meaning specified in Section 26 of this Agreement.

“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Seller under any Program Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

“Independent Appraiser” shall mean an independent professional real estate appraiser who is a member in good standing of the American Appraisal Institute, and, if the state in which the related Mortgaged Property is located certifies or licenses appraisers, is certified or licensed in such state, and in each such case, who has a minimum of five years’ experience in the subject property type. “Independent Appraisers” approved by Buyer as of the Closing Date are CBRE, Inc., Cushman & Wakefield, Inc., HVS International, Inc. (for hotels) and Joseph J. Blake and Associates, Inc. From time to time, Buyer may approve additional “Independent Appraisers” in its sole and absolute discretion.

“Independent Manager” shall mean an individual who has prior experience as an independent director, independent manager or independent member with at least three (3) years of employment experience and who is provided by Corporation Service Company, CT Corporation, Lord Securities Corporation, National Registered Agents, Inc., Global Securitization Services LLC, Stewart Management Company, Wilmington Trust Company, or, if none of those companies is then providing professional independent managers, another nationally-recognized company that provides professional independent managers and other corporate services in the ordinary course of its business and which is reasonably approved by Buyer, is not an Affiliate of Seller, and has never been, and will not while serving as Independent Manager be, any of the following:

(i) a member (other than an independent, non-economic “springing” member), partner, equityholder, manager, director, officer or employee of Seller or any of Seller’s equityholders or Affiliates (other than as an independent manager, director or non-economic “springing” member of an Affiliate of Seller that is not in the direct chain of ownership of Seller and that is required by a creditor to be a special purpose bankruptcy remote entity);

(ii) a creditor, supplier or service provider (including provider of professional services) to Seller or any of Seller’s equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional independent managers or independent directors and other corporate services and that also provides lien search and other similar services to Seller or any of its equityholders or Affiliates in the ordinary course of business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) any of (i) or (ii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the independent manager or independent director of a “special purpose entity” affiliated with Seller shall not be disqualified from serving as the Independent Manager of Seller; provided that the fees that such natural person earns from serving as an independent manager or independent director of such Affiliates of Seller in any given year constitute, in the aggregate, less than five percent (5%) of such individual’s annual income for that year. The same natural persons may not serve as the Independent Manager of Seller and, at the same time, serve as an independent director or independent manager of an equityholder or member of Seller.



“Insolvency Event” shall mean, with respect to any Person, (i) the filing of a decree or order for relief by a court having jurisdiction in the premises with respect to such Person or any substantial part of its assets or property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its assets or property, or ordering the winding-up or liquidation of such Person’s affairs, and such decree or order shall remain undismitted, unstayed and in effect for a period of sixty (60) days, (ii) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, (iii) the consent by such Person to the entry of an order for relief in an involuntary case under any Insolvency Law, (iv) the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its assets or property, (v) the making by such Person of any general assignment for the benefit of creditors, (vi) the admission in a legal proceeding of the inability of such Person to pay its debts generally as they become due, (vii) the failure by such Person generally to pay its debts as they become due or (viii) the taking of action by such Person in furtherance of any of the foregoing.

“Insolvency Laws” shall mean, the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments and similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

“Insolvency Proceeding” shall mean any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

“Interest Income” shall mean, with respect to any Purchased Asset, all Income attributable to interest on such Purchased Asset (including Income attributable to the portion of the outstanding principal amount of a Purchased Asset, if any, that represents interest which has accrued in kind and has been added to the principal balance of such Purchased Asset), including all scheduled payments of interest and payments of interest relating to principal prepayments, all guaranty payments attributable to interest and proceeds of any liquidations, sales or dispositions attributable to interest on such Purchased Asset.

“IRS” shall mean the U.S. Internal Revenue Service.

“ISDA Definitions” shall mean the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

“Lien” shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other easement, restriction, covenant, encumbrance, charge or transfer of, on or affecting Seller, any Purchased Asset or any Mortgaged Property or any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialman’s and other similar liens and encumbrances.

“LTV” shall mean, with respect to any Purchased Asset, the fraction, expressed as a percentage, the numerator of which is the sum of (i) the outstanding principal balance of the related Whole Loan or A-Note plus (ii) the total amount of any future funding obligations associated with such Whole Loan or A-Note and the denominator of which is the current Appraised Value of the related Mortgaged Property (or Mortgaged Properties) relating to such Purchased Asset.

“LTV Test” shall mean, with respect to any Purchased Asset, a test that will be satisfied on any date of determination if such Purchased Asset’s LTV is less than or equal to the LTV Threshold for such Purchased Asset.

“LTV Threshold” shall have the meaning assigned to such term in the Fee Letter.

“Market Material Adverse Change” shall mean any of the following: (i) a general suspension of trading on major stock exchanges, (ii) as Buyer may determine in its sole and absolute discretion, the effective absence of a “repo market” or related “lending market” for purchasing (subject to repurchase) or financing debt obligations secured by commercial mortgage loans or securities, (iii) a repeal of §§ 362(b) or 555 of the Bankruptcy Code, or (iv) a material adverse modification of (a) the definition of “securities contract” as contemplated by § 741 of the Bankruptcy Code, (b) the “safe harbor” or other provisions of §§ 362(b), 546(e), 555 or 561 of the Bankruptcy Code or (c) any defined terms used in such sections of the Bankruptcy Code that would alter the scope or meaning of such sections.

“Material Adverse Change” shall mean a material adverse change in or to (i) the property, business, operations or financial condition of Seller, Guarantor, Pledgor and any Affiliated Originator, taken as a whole, (ii) the ability of Seller, Guarantor, Pledgor or any Affiliated Originator to perform its obligations under any of the Program Documents to which it is a party, (iii) the validity, legality or enforceability of any Program Document, Purchased Asset Document, Purchased Asset or security interest granted hereunder or thereunder, (iv) the rights and remedies of Buyer or any Indemnified Party under any Program Document, Purchased Asset Document or Purchased Asset or (v) the perfection or priority of any Lien granted under any Program Document or Purchased Asset Document.

“Material Modification” shall mean any material extension, amendment, waiver, termination, rescission, cancellation, release or other modification to the terms of, or any collateral, guaranty or indemnity for, or the exercise of any material right or remedy of a holder (including all lending, corporate rights, remedies, consents, approvals and waivers) of, any Purchased Asset or Purchased Asset Document.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor in interest.

“Mortgage” shall mean the mortgage, deed of trust, deed to secure debt or other similar instrument, creating a valid and enforceable first lien on or a first priority ownership interest in the Mortgaged Property.

“Mortgage Asset Schedule” shall have the meaning assigned to such term in the Custodial Agreement.

“Mortgage Note” shall mean a note or other evidence of indebtedness of a Mortgagor secured by a Mortgage.

“Mortgaged Property” shall mean the real property securing repayment of the debt evidenced by a Mortgage Note.

“Mortgagee” shall mean the record holder of a Mortgage Note secured by a Mortgage.

“Mortgagor” shall mean the obligor on a Mortgage Note and/or the grantor of the related Mortgage.

“Multiemployer Plan” shall mean a multiemployer plan defined as such in Section 3(37) of ERISA or Section 4001(a)(3) to which contributions have been, or were required to have been, made by Seller or any ERISA Affiliate.

“NCF DSCR” shall mean, for any Purchased Asset, as of any date of determination, the ratio of the Underwritten Net Cash Flow produced by the related Mortgaged Property to the aggregate Annual Debt Service for such Purchased Asset.

“New Asset” shall mean an Eligible Asset that Seller proposes to sell to Buyer pursuant to a Transaction.

“OFAC” shall mean the Office of Foreign Assets Control of the United States Treasury Department.

“Originator” shall mean an Affiliated Originator or an Unaffiliated Originator, as the context may require.

“Other Connection Taxes” shall mean with respect to Buyer, Taxes imposed as a result of a present or former connection between Buyer and the jurisdiction imposing such Taxes (other than a connection arising from Buyer having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Program Document or sold or assigned an interest in any Transaction or Program Document).

“Other Taxes” shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under any Program Document or Purchased Asset Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Program Document or Purchased Asset Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Participant” shall have the meaning specified in Section 19(b)(i) of this Agreement.

“Participant Register” shall have the meaning specified in Section 19(b)(ii) of this Agreement.

“Participation Agreement” shall mean a participation agreement governing the respective rights and obligations of the holders of any Eligible Participation Interest and the Companion Interest(s) related thereto, as same may be amended, modified and/or restated from time to time in accordance with the terms hereof.

“Participation Certificate” shall mean the original participation certificate evidencing an Eligible Participation Interest.

“Participation Servicer” shall mean the “Servicer” as defined in the related Participation Agreement.

“Party” shall have the meaning assigned to it in the opening paragraph of this Agreement.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“Patriot Act Offense” shall have the meaning specified in Section 12(o)(iii) of this Agreement.

“Permitted Liens” shall mean any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding has been commenced: (i) Liens for state, municipal, local or other local taxes not yet due and payable, not overdue for more than thirty (30) days or being contested in good faith by appropriate proceedings, (ii) Liens imposed by Requirement of Law, such as materialman’s, mechanics’, carriers’, workman’s, repairman’s and similar Liens, arising in the ordinary course of business securing obligations that are not overdue for more than thirty (30) days, (iii) Liens granted pursuant to or by the Program Documents and (iv) Liens disclosed in any Approved Exception Report.

“Permitted REIT Distributions” shall mean distributions by Seller in an amount equal to the minimum amount that Seller would be required to distribute to maintain status as a REIT (assuming all such distributions would be made in cash) and avoid the payment of any income or excise taxes imposed under Section 857 and 4981 of the Internal Revenue Code, determined in good faith by the Seller Parties as if Seller was a REIT and without taking into account any limitations on the current deductibility of any expense items.

“Person” shall mean an individual, corporation, limited liability company, business trust, partnership, joint tenant or tenant-in-common, trust, unincorporated organization, or other entity, or a federal, state or local government or any agency or political subdivision thereof.

“Plan” shall mean an employee benefit or other plan established or maintained by Seller or any ERISA Affiliate or to which Seller or any ERISA Affiliate makes or is obligated to make contributions, or with respect to which Seller or any ERISA Affiliate has any liability, contingent or otherwise, and that is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code, other than a Multiemployer Plan.

“Plan Assets” shall mean “plan assets” as defined in 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA.

“Pledge Agreement” shall mean the Pledge and Security Agreement by Pledgor for the benefit of Buyer, dated as of the date hereof, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Pledgor” shall mean, FS CREIT Finance Holdings LLC, a Delaware limited liability company.

“PML” shall have the meaning specified in Exhibit G-1.

“Price Differential” shall mean, with respect to any Transaction as of any date of determination, the aggregate amount obtained by daily application of the Pricing Rate to the outstanding Purchase Price for such Transaction on a 360-day-per-year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) such date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction).

“Pricing Rate” shall mean for each Pricing Rate Period, an annual rate equal to (i) for a SOFR Transaction, the Applicable Spread plus the applicable SOFR Index for such Pricing Rate Period, (ii) for a Benchmark Replacement Transaction, the Applicable Spread plus the Benchmark Replacement for such Pricing Rate Period and (iii) for a Base Rate Transaction, the Base Rate plus the Base Rate Spread, in each case, for such Pricing Rate Period for such Transaction and shall be subject to adjustment and/or conversion as provided in Sections 3(f) and (g) of this Agreement; provided that, while an Event of Default is continuing, the Pricing Rate shall be the applicable Default Rate.

“Pricing Rate Determination Date” shall mean, with respect to any determination of the Benchmark Rate applicable to a Pricing Rate Period:

(i) if the Benchmark is Term SOFR or SOFR Average, 3:00 p.m. (New York City time) on the day that is two (2) U.S. Government Securities Business Days prior to the first day of such Pricing Rate Period; and

(ii) if the Benchmark is not Term SOFR or SOFR Average, the date and time determined by Buyer in accordance with the Benchmark Replacement Conforming Change.

“Pricing Rate Period” shall mean, (a) in the case of the first Pricing Rate Period with respect to any Transaction, the period commencing on and including the Purchase Date for such Transaction and ending on and excluding the following Remittance Date and, (b) in the case of any subsequent Pricing Rate Period, the period commencing on and including the Remittance Date immediately following the prior Pricing Rate Period and ending on and excluding the following Remittance Date; provided, however, that in no event shall any Pricing Rate Period end subsequent to the Repurchase Date.

“Prime Rate” shall mean, as of any date of determination, a rate per annum equal to the rate of interest published in The Wall Street Journal as the “prime rate”, as in effect on such day, with any change in the prime rate resulting from a change in said prime rate to be effective as of the date of the relevant change in said prime rate; provided, however, that if more than one prime rate is published in The Wall Street Journal for a day, the average of the prime rates shall be used; provided, further, however, that the Prime Rate (or the average of the prime rates) will be rounded to the nearest 1/1000 of 1% or, if there is no nearest 1/1000 of 1%, to the next higher 1/1000 of 1%. In the event that The Wall Street Journal should cease or temporarily interrupt publication, then the Prime Rate shall mean the daily average prime rate published in another business newspaper, or business section of a newspaper, of national standing chosen by Buyer. If The Wall Street Journal resumes publication, the substitute index will immediately be replaced by the prime rate published in The Wall Street Journal. In the event that a prime rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Buyer shall select a comparable interest rate index which is readily available to Seller and verifiable by Seller but is beyond the control of Buyer. Buyer shall give Seller prompt written notice of its choice of a substitute index and when the change became effective. Such substitute index will also be rounded to the nearest 1/1000 of 1% or, if there is no nearest 1/1000 of 1%, to the next higher 1/1000 of 1%. The determination of the Prime Rate by Buyer shall be conclusive and binding absent manifest error.

“Principal Payment” shall mean, with respect to any Purchased Asset, any payment or prepayment of principal received by Account Bank or Buyer in respect thereof and applied as principal toward the Purchase Price of such Purchased Asset pursuant to Section 5.

“Program Documents” shall mean, collectively, this Agreement, the Guaranty, the Fee Letter, the Repo Collection Account Control Agreement, the Custodial Agreement, each Servicing Agreement, each Servicing Acknowledgement Agreement, the Pledge Agreement, each Purchase Agreement and all Confirmations executed pursuant to this Agreement in connection with specific Transactions.

“Property Value” shall mean, with respect to any Mortgaged Property, the least of (i) the purchase price for such Mortgaged Property (if the related Eligible Asset is a loan made in connection with the acquisition of such Mortgaged Property), (ii) the Appraised Value and (iii) following the occurrence of a Credit Event, an amount determined by Buyer in its sole and absolute discretion.

“Property Value Applicable Pricing Percentage” shall have the meaning assigned to such term in the Fee Letter.

“Proposed Purchase Price” shall mean the Purchase Price proposed by Seller for a New Asset as set forth in the related Transaction Request.

“Purchase Agreement” shall mean each sale and/or contribution agreement or master bill of sale, as applicable, pursuant to which an Originator transfers Eligible Assets to Seller.

“Purchase Date” shall mean, with respect to any Purchased Asset, (a) the date on which such Purchased Asset is to be transferred by Seller to Buyer and (b) the date on which Buyer transfers additional Purchase Price to Seller with respect to any Future Funding.

“Purchase Price” shall mean, with respect to any Purchased Asset:

- (a) as of the Purchase Date for such Purchased Asset, an amount not to exceed the lesser of (i) the UPB Applicable Pricing Percentage of the outstanding principal balance of the related Whole Loan, A-Note or Eligible Participation Interest, as applicable, and (ii) the Property Value Applicable Pricing Percentage of the Property Value of the Mortgaged Property securing such Purchased Asset (or in the case of an A-Note or Eligible Participation Interest, an allocated portion of the Property Value with respect to such A-Note or Eligible Participation Interest, as applicable); provided that, for the avoidance of doubt, the Purchase Price for any Waived Eligibility Criteria Asset shall be any amount Buyer shall determine in its sole and absolute discretion as of the Purchase Date; and
- (b) as of any other date, the amount described in the preceding clause (a) reduced by (A) any amount of Purchase Price Margin Deficit transferred to Buyer pursuant to Section 4 with respect to such Purchased Asset, (B) other Principal Payments received by Buyer with respect to such Purchased Asset and (C) any other payments made by or on behalf of Seller or otherwise applied by Buyer in reduction of the outstanding Purchase Price, in each case before or as of such determination date with respect to such Purchased Asset and (ii) increased by the amount of (1) any Future Funding acquired by Buyer from Seller pursuant to Section 3(b) and (2) any Purchase Price Margin Excess transferred to Seller from Buyer pursuant to Section 4(c).

“Purchase Price Margin Call” shall have the meaning specified in Section 4(a) of this Agreement.

“Purchase Price Margin Deficit” shall have the meaning given to such term in the Fee Letter.

“Purchase Price Margin Excess” shall have the meaning specified in Section 4(c) of this Agreement.

“Purchase Price Margin Excess Request” shall have the meaning specified in Section 4(c) of this Agreement.

“Purchase Price Percentage” shall mean (a) with respect to any Purchased Asset for which the Purchase Price as of the related Purchase Date was calculated in accordance with clause (a)(i) of the definition of “Purchase Price”, the UPB Applicable Pricing Percentage or such lower percentage as determined by Buyer and described in the related Confirmation and (b) with respect to any Purchased Asset for which the Purchase Price as of the related Purchase Date was calculated in accordance with clause (a)(ii) of the definition of “Purchase Price”, the Property Value Applicable Pricing Percentage or such lower percentage as determined by Buyer and described in the related Confirmation. The Purchase Price Percentage with respect to each Purchased Asset as of the related Purchase Date shall be set forth in the Confirmation with respect to the Transaction relating to such Purchased Asset.

“Purchased Asset Documents” shall mean, with respect to a Purchased Asset, the documents comprising the Purchased Asset File for such Purchased Asset.

“Purchased Asset File” shall mean, with respect to any Purchased Asset, the documents specified as the “Purchased Asset File” in Section 7(b).

“Purchased Asset(s)” shall mean (i) with respect to any Transaction, the Eligible Asset or Eligible Assets sold by Seller to Buyer in such Transaction and not repurchased by Seller and (ii) with respect to the Transactions in general, all Eligible Assets sold by Seller to Buyer and not repurchased by Seller and any additional collateral delivered by Seller to Buyer pursuant to this Agreement, in each case together with all Purchased Asset Documents, Servicing Agreements, Servicing Records, Servicing Rights, insurance relating to any such Eligible Asset, and collection and escrow accounts relating to any such Eligible Asset.

“Qualified Servicing Expenses” shall mean, with respect to any Servicer that is not an Affiliate of Seller, (i) the Servicing Fee and (ii) any expenses payable to such Servicer that are expressly provided for in the related Servicing Agreement, including any such amounts constituting Servicer Income and that are netted by such Servicer out of collections pursuant to such Servicing Agreement.

“Recourse Percentage” shall have the meaning specified in the Fee Letter.

“Redirection Letter” shall mean an irrevocable redirection letter in the form attached as Exhibit I to this Agreement, which Buyer may send or instruct Custodian to send to each Mortgagor or obligor with respect to a Purchased Asset subject to a Transaction after the occurrence of an Event of Default.

“Register” shall have the meaning specified in Section 19(f) of this Agreement.

“REIT” shall mean a “real estate investment trust” as defined in Section 856 of the Code.

“Release Price” shall mean, with respect to any Early Repurchase Purchased Asset as of the related Repurchase Date, an amount equal to the portion of the Repurchase Price calculated pursuant to clause (i) of the definition thereof.

“Relevant Governmental Body” shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“REMIC” shall mean a “real estate mortgage investment conduit” as defined in Section 860D of the Code.

“REMIC Eligible Asset” shall mean any Purchased Asset that is designated as a REMIC Eligible Asset in the related Confirmation.

“REMIC Provisions” shall mean the provisions of United States federal income tax law relating to real estate mortgage investment conduits, which appear at Section 860A through Section 860G of subchapter M of Chapter 1 of the Code, and related provisions and regulations promulgated thereunder, as the foregoing may be in effect from time to time.



“Remittance Date” shall mean, for each calendar month during the term of this Agreement, the 20<sup>th</sup> day of each month (or if such day is not a Business Day, the next following Business Day) or such other day as is mutually agreed to by Seller and Buyer; provided, that the initial Remittance Date shall be November 20, 2022.

“Repo Collection Account” shall mean a segregated non-interest bearing account, in the name of Seller, for the benefit of Buyer, established at Account Bank, bearing account number 104797889813.

“Repo Collection Account Control Agreement” shall mean the Blocked Account Control Agreement, dated as of the date hereof, among Account Bank, Seller and Buyer relating to the Repo Collection Account, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Repurchase Date” shall mean, with respect to each Purchased Asset, the earliest to occur of (i) the Facility Termination Date, (ii) any Early Repurchase Date, Eligibility Repurchase Date, Custodial Failure Repurchase Date, Defaulted Asset Repurchase Date or Accelerated Repurchase Date therefor and (iii) with respect to each Eligible Participation Interest, the Eligible Participation Interest Mandatory Repurchase Date.

“Repurchase Obligations” shall mean all obligations of Seller to pay the Repurchase Price of each Purchased Asset on the Repurchase Date with respect to such Purchased Asset and all other obligations and liabilities of Seller to Buyer arising under or in connection with the Program Documents, whether now existing or hereafter arising, and all interest and fees that accrue after the commencement by or against Seller, Guarantor, Pledgor, any Affiliated Originator or any Affiliate of Seller, Guarantor, Pledgor or any Affiliated Originator of any Insolvency Proceeding naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding (in each case, whether due or accrued).

“Repurchase Price” shall mean, with respect to any Purchased Asset, as of any date, an amount equal to the sum of (i) the outstanding Purchase Price as of such date, (ii) the accrued and unpaid Price Differential for such Purchased Asset as of such date, (iii) the Exit Fee, if any, and (iv) any accrued and unpaid fees and expenses and indemnity amounts and any other amounts owed by Seller, Guarantor, Pledgor or any Affiliated Originator to Buyer under this Agreement or any other Program Document.

“Requirement of Law” shall mean any law, treaty, ordinance, rule, regulation, code, directive, policy, order or requirement or determination of an arbitrator or a court or other Governmental Authority whether now or hereafter enacted or in effect.

“Resolution Authority” shall mean (a) with respect to any EEA Financial Institution, an EEA Resolution Authority or (b) with respect to any UK Financial Institution, a UK Resolution Authority.

“S&P” shall mean Standard & Poor’s Financial Services LLC, a division of The McGraw Hill Companies, Inc., a New York corporation, or any successor thereto.

“Sanctionable Activity” shall mean any condition or activity specifically identified under any Sanctions as constituting a basis for the imposition of Sanctions against a Person engaged in such activity or described by such condition.

“Sanctioned Country” shall mean any country or territory with which dealings are broadly restricted or prohibited by any Sanctions (as of the date hereof, Crimea, Cuba, Iran, North Korea, and Syria, but subject to such changes as take place over time).

“Sanctioned Person” shall mean any Person with whom dealings are restricted or prohibited by any Sanctions, including any Person (a) that is named as a target of Sanctions in any list of such Persons; (b) that is located, organized or resident in, or owned by, controlled by, or acting on behalf of the government of, a Sanctioned Country; or (c) with which dealings are otherwise restricted or prohibited pursuant to any Sanctions, including by reason of any relationship of ownership, control, or agency with, or any direct or indirect commercial dealings with, any Person described in clause (a) or (b).

“Sanctions” shall mean any statute, executive order, regulation, decree, judicial decision, or any other legally binding act with respect to the imposition or administration of any economic, financial or trade sanctions or embargoes, export controls or other restrictive measures imposed by the United States of America, Canada, the European Union or a member state of the European Union, the United Kingdom, or the United Nations.

“SEC” shall have the meaning specified in Section 23(a) of this Agreement.

“Seller” shall mean FS CREIT Finance NTX-1 LLC, a Delaware limited liability company.

“Seller LLC Agreement” shall mean that certain Amended and Restated Limited Liability Company Operating Agreement, dated as of November 10, 2022 among Seller, the Pledgor, as the Member, and the Independent Manager, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Seller Parties” shall have the meaning specified in Exhibit G-1.

“Servicer” shall mean Wells Fargo Bank, National Association or any other servicer mutually agreed upon by Buyer and Seller.

“Servicer Account” shall have the meaning specified in that certain Servicing Agreement, by and among Seller, Buyer and Wells Fargo Bank, National Association, dated as of the date hereof, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Servicer Income” shall mean any Income that a Servicer, under the express terms of the Servicing Agreement to which it is a party, is entitled to receive and retain for its own account and is not required to pay over to Seller or Buyer, including, without limitation, any accrued fees due and payable to a Servicer.

“Servicer Remittance Date” shall have the meaning assigned to such term in the Servicing Agreement.

“Servicing Acknowledgement Agreement” shall mean, with respect to any Servicer, the Servicing Acknowledgement Agreement or other similar agreement, among Buyer, such Servicer and Seller, providing for the servicing of Purchased Assets by and among Buyer, Seller and such Servicer, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Servicing Agreement” shall mean, with respect to (i) Wells Fargo Bank, National Association, that certain Servicing Agreement, dated as of the date hereof, by and among, Seller, Buyer and Wells Fargo Bank, National Association, as the same may be amended, restated, supplemented or otherwise modified from time to time, and (ii) any other Servicer, the servicing agreement in form and substance acceptable to Buyer in its sole and absolute discretion providing for the servicing of Purchased Assets by and among Buyer, Seller and such Servicer, as the same may be amended, restated, supplemented or otherwise modified from time to time, as modified by any related Servicing Acknowledgement Agreement.

“Servicing Fee” shall have the meaning assigned to such term (or any similar or substitute term) in the applicable Servicing Agreement.

“Servicing Records” shall have the meaning specified in Section 28(b) of this Agreement.

“Servicing Rights” shall mean all of Seller’s right, title and interest in and to any and all of the following: (a) any and all rights of Seller to service, collect and or direct a Servicer’s actions and decisions with respect to, the Purchased Assets or to appoint (or terminate the appointment of) any third party as servicer of the Purchased Assets; (b) any payments to or monies received by or payable to Seller or any other Person as compensation for servicing the Purchased Assets; (c) any late fees, penalties or similar payments with respect to the Purchased Assets; (d) all agreements or documents creating, defining or evidencing any such servicing rights to the extent they relate to such servicing rights and all rights of Seller (individually or as servicer) thereunder (including all rights to set the compensation of any third-party servicer); (e) the rights to collect and maintain escrow payments or other similar payments with respect to the Purchased Assets and any amounts actually collected by Seller or any third-party servicer with respect thereto; (f) the rights, if any, to appoint, designate and retain any other servicers, sub-servicers, special servicers, agents, custodians, trustees and liquidators with respect to the Purchased Assets; and (g) all rights of Seller to give directions with respect to the management and distribution of any collections, escrow accounts, reserve accounts or other similar payments or accounts in connection with the Purchased Assets, and, in each case, all obligations related or incidental thereto, in each case, subject to the requirements and limitations set forth in the related Servicing Agreement.

“SIPA” shall have the meaning specified in Section 23(a) of this Agreement.

“SOFR” shall mean a rate per annum equal to the secured overnight financing rate published by the SOFR Administrator on the SOFR Administrator’s Website.

“SOFR Adjustment Conforming Changes” shall mean, with respect to any SOFR Index, any technical, administrative or operational changes (including, without limitation, changes to the definitions of “Business Day”, “Pricing Rate Determination Date”, “Pricing Rate Period”, “Remittance Date”, and the timing and frequency of determining rates and making payments of interest, preceding and succeeding business day conventions, and rounding of amounts) that Buyer decides may be appropriate to reflect the adoption and implementation of such SOFR Index and to permit the administration thereof by Buyer.

“SOFR Administrator” shall mean the Federal Reserve Bank of New York (or a successor, as the administrator of the secure overnight financing rate).

“SOFR Administrator’s Website” shall mean the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Average” shall mean, as of the Pricing Rate Determination Date for any Pricing Rate Period, the rate of interest equal to the compounded average of SOFR over a rolling 30-calendar day period as such rate is currently published on the SOFR Administrator’s Website as “30-Day Average SOFR.”

“SOFR Floor” shall have the meaning assigned to such term in the Fee Letter.

“SOFR Index” shall mean (i) initially, Term SOFR; and (ii) subsequently, commencing on the Term SOFR Transition Date, SOFR Average. Notwithstanding the foregoing or anything herein to the contrary, in no event shall the SOFR Index be less than the weighted average SOFR Floor for all Purchased Assets.

“SOFR Transaction” shall mean, with respect to any Pricing Rate Period, any Transaction with respect to which the Pricing Rate for such Pricing Rate Period is determined with reference to applicable SOFR Index.

“Supplemental Due Diligence List” shall mean, with respect to any New Asset, information or deliveries concerning the New Asset that Buyer shall reasonably request in addition to the Underwriting/Due Diligence Package.

“Survey” shall mean a certified ALTA/ACSM (or applicable state standards for the state in which the Collateral is located) survey of a Mortgaged Property prepared by a registered independent surveyor or engineer and in form and content satisfactory to Buyer and the company issuing the Title Policy for such Mortgaged Property.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term SOFR” shall mean the Term SOFR Reference Rate for a tenor comparable to the applicable Pricing Rate Period on the Pricing Rate Determination Date, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Pricing Rate Determination Date the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Pricing Rate Determination Date; provided, further that if such Term SOFR Reference Rate for the applicable tenor was last published by the Term SOFR Administrator more than three (3) U.S. Government Securities Business Days prior to such Pricing Rate Determination Date, a Benchmark Unavailability Period with respect to the Term SOFR Reference Rate will be deemed to have occurred.

Notwithstanding the foregoing or anything herein to the contrary, in no event shall Term SOFR be less than the weighted average SOFR Floor for all Purchased Assets.

“Term SOFR Administrator” shall mean CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Buyer in its reasonable discretion).

“Term SOFR Reference Rate” shall mean the forward-looking term rate based on SOFR, identified on the CME Group’s website at <https://www.cmegroup.com/market-data/cme-groupbenchmark-administration/term-sofr.html>, or any successor source.

“Term SOFR Transition Date” shall mean the date on which the Buyer has made a determination that a Term SOFR Transition Event has occurred.

“Term SOFR Transition Event” shall mean the determination by Buyer (which shall be conclusive and binding absent manifest error) that SOFR Average has been selected by Buyer; provided that Buyer shall not make any such selection unless Buyer is also making such selection with respect to substantially all of its similarly situated customers under similar repurchase and credit facilities.

“Testing Date” shall have the meaning specified in Exhibit G-1.

“Title Exceptions” shall have the meaning specified in Exhibit G-1.

“Transaction” shall have the meaning specified in Section 1 of this Agreement.

“Transaction Conditions Precedent” shall have the meaning specified in Section 3(b) of this Agreement.

“Transaction Request” shall have the meaning specified in Section 3(a) of this Agreement.

“Trust Receipt” shall have the meaning specified in the Custodial Agreement.

“UCC” shall have the meaning specified in Section 6(b) of this Agreement.

“UK Financial Institution” shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” shall mean the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Unaffiliated Originator” shall mean any unaffiliated third party originators as may be approved by Buyer, in its sole and absolute discretion, from time to time.

“Underlying Purchased Asset Reserves” shall mean, with respect to any Purchased Asset, the escrows, reserve funds or other similar amounts properly retained in accounts maintained by a Servicer of such Purchased Asset unless and until such funds are, pursuant to the terms of the related Purchased Asset Documents, released or otherwise available to Seller (but not if such funds are used for the purpose for which they were maintained, or if such funds are released to the related Mortgagor in accordance with the relevant Purchased Asset Documents).

“Underwriting/Due Diligence Package” shall mean, with respect to any New Asset, all of the information necessary for Buyer to perform its underwriting and due diligence with respect to any Eligible Asset in a timely fashion. Such information shall include, without limitation, the materials listed on Exhibit D to the extent such materials are applicable to such New Asset.

“Underwritten Net Cash Flow” shall mean, with respect to any Purchased Asset, the cash flow available for debt service on an annualized basis as of any date of determination.

“UPB Applicable Pricing Percentage” shall have the meaning assigned to such term in the Fee Letter.

“U.S. Buyer” shall mean Buyer, and any Assignee that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Government Securities Business Day” shall mean any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Special Resolution Regime” shall mean each of (i) the FDIA and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

“U.S. Tax Compliance Certificate” shall have the meaning specified in Section 29(e)(i)(B)(III) of this Agreement.

“Volcker Rule” shall mean Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

“Waived Eligibility Criteria” shall have the meaning set forth within the definition of “Eligible Asset”.

“Waived Eligibility Criteria Asset” shall have the meaning specified in the definition of “Eligible Asset”.

“Whole Loan” shall mean a floating rate whole loan, approved by Buyer in its sole and absolute discretion, that requires current monthly payments based on SOFR or, if applicable, an alternative rate acceptable to Buyer provided for in the documentation for such Whole Loan.

“Write-Down and Conversion Powers” shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

### **3. INITIATION; CONFIRMATION; TERMINATION; FEES; EXTENSIONS**

(a) No more often than once per calendar week during the Funding Period, or on any other day as agreed to by Buyer, and subject to the other terms and conditions set forth in this Agreement (including, without limitation, the Transaction Conditions Precedent), pursuant to a written request in the form of Exhibit A at the initiation of Seller (each, a “Transaction Request”), Buyer may agree to enter into Transactions. Buyer (as well as its counsel and any third-party due diligence provider) shall have the right to review all Eligible Assets proposed to be sold to Buyer in any Transaction and to conduct its own due diligence investigation of such Eligible Assets (including the related Mortgaged Properties) as Buyer determines, which due diligence investigation Buyer shall endeavor to complete within ten (10) Business Days of Buyer’s receipt from Seller of a Transaction Request, the complete Underwriting/Due Diligence Package, any supplemental information furnished by Seller to Buyer pursuant to any Supplemental Due Diligence List and such other information as may be requested by Buyer with respect to any Transaction. Buyer shall determine in its sole and absolute discretion whether or not it is willing to purchase any or all of the proposed Eligible Assets, and if so, on what terms

and conditions and in accordance with this Agreement. It is expressly agreed and acknowledged that Buyer is entering into the Transactions on the basis of representations and warranties made by Seller and on the completeness and accuracy of the information contained in the applicable Underwriting/Due Diligence Package and any supplemental information furnished by Seller to Buyer pursuant to any Supplemental Due Diligence List, subject, in each case, to any Approved Exception Report, and any incompleteness or inaccuracies in the related Underwriting/Due Diligence Package or any supplemental information furnished by Seller to Buyer pursuant to any Supplemental Due Diligence List will only be acceptable to Buyer if disclosed in writing, including in any Approved Exception Report, to Buyer by Seller in advance of the related Purchase Date, and then only if Buyer opts to purchase the related Purchased Asset(s) from Seller notwithstanding such incompleteness and inaccuracies. Seller shall at all times remain solely liable for any additional advances required to be made in connection with any Future Funding Eligible Asset and Buyer shall be under no obligation to make any additional advances under a Future Funding Eligible Asset, unless such Future Funding Eligible Asset is designated as a Buyer Future Funding Eligible Asset in Buyer's sole and absolute discretion.

(b) Upon agreeing to enter into a Transaction hereunder, Buyer shall promptly deliver to Seller a written confirmation (in electronic form) in the form of Exhibit B of each Transaction (a "Confirmation"), and provided each of the Transaction Conditions Precedent shall have been satisfied at or prior to the closing of the Transaction as determined by Buyer in its sole and absolute discretion (or affirmatively waived in writing by Buyer, including as set forth in the Confirmation, if any), Buyer shall pay the Purchase Price for such Transaction to Seller by wire transfer of immediately available funds.

Buyer's approval of the purchase of an asset on such terms and conditions as Buyer may require shall be evidenced only by its execution and delivery of the related Confirmation. For the avoidance of doubt, Buyer shall not be obligated to purchase any New Asset notwithstanding a Confirmation executed by Buyer and Seller unless and until all Transaction Conditions Precedent have been satisfied or waived by Buyer. Each Confirmation, together with this Agreement, shall be conclusive evidence of the terms of the Transaction covered thereby, and shall be construed to be cumulative to the extent possible. If terms in a Confirmation are inconsistent with terms in this Agreement with respect to a particular Transaction, the Confirmation shall prevail. The fact that Buyer has conducted or has failed to conduct any partial or complete examination or any other due diligence review of any Purchased Asset shall in no way affect any rights Buyer may have under the Program Documents or otherwise with respect to any representations or warranties or other rights or remedies thereunder or otherwise, including the right to determine at any time that such Purchased Asset is not an Eligible Asset.

No Transaction shall be entered into if (i) any Default or Event of Default has occurred and is continuing or would occur as a result of such Transaction, (ii) the Repurchase Date for the Purchased Assets subject to such Transaction would be later than the Facility Termination Date, (iii) after giving effect to such Transaction, the aggregate Repurchase Price of all Purchased Assets subject to Transactions then outstanding would exceed the Facility Amount, (iv) any Purchase Price Margin Deficit is outstanding or would occur as a result of such Transaction or (v) any Transaction Conditions Precedent have not been satisfied or waived by Buyer. If at any time the aggregate outstanding Purchase Price exceeds the Facility Amount, Seller shall immediately pay to Buyer an amount necessary to reduce such aggregate outstanding Purchase Price to an amount equal to or less than the Facility Amount.



With respect to any Transaction, the Pricing Rate shall be determined initially on the Pricing Rate Determination Date applicable to the first Pricing Rate Period for such Transaction, and shall be reset on each Pricing Rate Determination Date for the succeeding Pricing Rate Period for such Transaction. Buyer or its agent shall determine the Pricing Rate in accordance with the terms of this Agreement on each Pricing Rate Determination Date for the related Pricing Rate Period and notify Seller of such rate for such period on such Pricing Rate Determination Date.

For purposes of this Section 3(b), the “Transaction Conditions Precedent” shall be deemed to have been satisfied with respect to any proposed Transaction if:

- (A) Buyer has received all documents, certificates, information, financial statements, reports, approvals and opinions of counsel as Buyer may reasonably require (including those listed in the related Confirmation, if any);
- (B) no Default or Event of Default in each case under this Agreement shall have occurred and be continuing as of the Purchase Date for such proposed Transaction;
- (C) Seller shall have delivered to Buyer all information which Seller believes to be reasonably necessary for Buyer to make an informed business decision with respect to the purchase of such Eligible Asset (including an Appraisal dated within three (3) months of the Purchase Date therefor) and Seller shall have certified to Buyer that Seller has no knowledge of any material information concerning such Eligible Asset, which is not reflected in the related Diligence Material or otherwise disclosed to Buyer in writing, including as set forth in any related Approved Exception Report;
- (D) the representations and warranties made by each of Seller, Guarantor, Pledgor and each Affiliated Originator in the Program Documents to which it is a party shall be true and correct in all material respects as of the Purchase Date for such Transaction (except to the extent such representations and warranties are made as of a particular date and as modified by any Approved Exception Report);
- (E) with respect to each Eligible Asset proposed to be sold to Buyer in such Transaction, Buyer (or its designee) shall have received: (1) a Transaction Request, (2) a Redirection Letter executed in blank (3) a Trust Receipt and all other items required to be delivered to Buyer under the Custodial Agreement and (4) the related Purchase Agreement, if applicable, which, if such Eligible Asset was

originated by an Affiliated Originator, shall include a backup security interest in favor of Seller and otherwise be in form and substance reasonably acceptable to Buyer in its sole discretion, and (5) the Underwriting/Due Diligence Package (including a copy of Seller's internal investment committee memo related to such Eligible Asset and any supplemental information furnished by Seller to Buyer pursuant to any Supplemental Due Diligence List);

- (F) the applicable Servicer has received copies of the Purchased Asset File and any other documents required to be delivered under the Servicing Agreement;
- (G) no Market Material Adverse Change shall have occurred;
- (H) Seller has paid all fees and expenses then due and payable to Buyer under the Program Documents;
- (I) Seller shall have provided for all Underlying Purchased Asset Reserves to be held by the applicable Servicer and shall have satisfactorily pledged all Underlying Purchased Asset Reserves relating to such Eligible Asset to Buyer, as determined by Buyer in Buyer's sole discretion;
- (J) Buyer shall have satisfactorily completed its "know your customer" and OFAC diligence (as to the related Mortgagor, guarantor and all other related parties, as determined by Buyer) and, at least five (5) days prior to the related Purchase Date, if Seller qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, Seller shall deliver to Buyer a Beneficial Ownership Certification; and
- (K) Buyer shall have (1) determined, in its sole and absolute discretion, that the New Assets proposed to be sold to Buyer by Seller in such Transaction are Eligible Assets (or agreed in writing to waive any particular eligibility requirements) and (2) obtained satisfactory results of its underwriting review of such Eligible Asset and the related Mortgaged Property (or Mortgaged Properties) performed by Buyer and any third party reviewers engaged by Buyer for such review.

If at any time Seller has made or anticipates making Future Fundings to the Mortgagor with respect to a Purchased Asset that Buyer has approved as a Buyer Future Funding Eligible Asset in the Confirmation for such Purchased Asset and Future Funding Financing Capacity exists (or will exist) as a result of such advance, provided no Default or Event of Default has occurred and is continuing, Seller may, prior to the Funding Expiration Date, request that Buyer increase the Purchase Price thereof by a specified amount up to the Future Funding Financing Capacity for such Purchased Asset at least five (5) Business Days prior to the requested funding

date from Buyer to Seller; and, provided that (i) any such increase in Purchase Price must at least equal \$750,000 in the aggregate on the date such Purchase Price is increased; (ii) Seller may request no more than two (2) increases in Purchase Price related to Future Fundings in the aggregate in any calendar month; (iii) Seller shall deliver to Buyer (w) a description of any material change since the Purchase Date with respect to the Purchased Asset or the Mortgaged Property securing the Purchased Asset, (x) any supplemental information requested by the Buyer, (y) a certification by Seller stating that (A) all conditions precedent to the funding by Seller of such Future Funding set forth in the related Purchased Asset Documents have been satisfied and that none of the conditions precedent to the funding of such Future Funding have been waived and (B) all prior additional advances previously requested by the related Mortgagor for which the related conditions precedent were satisfied were funded by Seller and (z) evidence reasonably satisfactory to Buyer that such Future Funding has been made by Seller or shall be made by Seller simultaneously with Buyer's payment of the additional Purchase Price with respect to such Purchased Asset; and (iv) the requested additional Purchase Price shall not cause the Purchase Price with respect to such Purchased Asset to exceed the Hypothetical Purchase Price for such Purchased Asset, Buyer shall pay to Seller the additional Purchase Price with respect to such Purchased Asset within two (2) Business Days after Buyer determines that the foregoing conditions have been satisfied and the Future Funding Financing Capacity (if any remains) shall be recalculated. Buyer shall promptly deliver to Seller an amended and restated Confirmation for the applicable Purchased Asset which reflects the increase in the Purchase Price and Seller shall promptly, but in any event, within one (1) Business Day, execute and return such amended and restated Confirmation to Buyer. For the avoidance of doubt, Seller may request an increase in Purchase Price pursuant to this paragraph for any Purchased Asset for which it has made a Future Funding on any date Future Funding Financing Capacity exists.

(c) (i) On the Repurchase Date with respect to a Transaction, termination of such Transaction will be effected by transfer to Seller or its agent of the Purchased Assets relating to such Transaction and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Section 5 of this Agreement) against the simultaneous transfer of the Repurchase Price with respect to such Transaction to an account of Buyer. In connection with any such termination of a Transaction pursuant to the preceding sentence, upon its receipt of the Repurchase Price as confirmed by Buyer, Buyer shall be deemed to have simultaneously released its security interest in such Purchased Asset and the related Collateral, shall authorize Custodian to release to Seller the Purchased Asset File for such Purchased Asset and, to the extent any UCC financing statement filed against Seller identifies such Purchased Asset, Seller may file an amendment thereto or termination thereof evidencing the release of such Purchased Asset from Buyer's security interest therein. Any such transfer or release shall be without recourse to Buyer and without representation or warranty by Buyer. Any Income with respect to such Purchased Asset received by Buyer after payment in full of the Repurchase Price therefor and any other amounts due hereunder with respect to such Purchased Asset, and the release of such Purchased Asset in accordance with the terms of this Agreement, shall be promptly transferred to Seller. Notwithstanding the foregoing, on or before the Facility Termination Date, Seller shall repurchase all Purchased Assets by paying to Buyer the outstanding Repurchase Price therefor and all other outstanding Repurchase Obligations. At any time after the Funding Expiration Date and at any time during the continuance of a Default or Event of Default, Seller cannot repurchase a Purchased Asset in connection with a full payoff of the underlying Whole Loan or A-Note by

related Mortgagor, unless one-hundred percent (100%) of the net proceeds due in connection with the relevant payoff shall be paid directly to Buyer. The portion of all such net proceeds in excess of the then-current Repurchase Price of the related Purchased Asset shall be applied by Buyer to reduce any other amounts due and payable to Buyer under this Agreement. In addition to the other rights and remedies of Buyer under this Agreement and the other Program Documents, Seller shall repurchase any Defaulted Asset or Purchased Asset that otherwise no longer qualifies as an Eligible Asset or Purchased Asset with respect to which any Purchased Asset Documents cease to be in the possession of the Custodian as required by the terms of the Custodial Agreement, each as determined in Buyer's sole discretion, on or before the related Defaulted Asset Repurchase Date, Eligibility Repurchase Date or Custodial Failure Repurchase Date, as applicable. If any Eligible Participation Interest is subject to a Transaction on the settlement date of the next CLO securitization issued after the Purchase Date therefor by an Affiliate of Seller, the proceeds of such securitization shall be contributed to Seller and used to satisfy the Seller's repurchase obligations with respect to any Eligible Participation Interests as of such Eligible Participation Interest Mandatory Repurchase Date.

- (ii) Except as expressly provided herein, including, without limitation, upon the occurrence and during the continuance of an Event of Default by Seller, no Transaction shall be terminable on demand by Buyer. Seller shall be entitled to terminate a Transaction on demand, in whole or in part, and repurchase any or all Purchased Assets subject to such Transaction (each, an "Early Repurchase Purchased Asset") on any Business Day prior to the Repurchase Date (each, an "Early Repurchase Date"); provided, however, that:
  - (A) Seller notifies Buyer in writing of its intent to terminate such Transaction and repurchase such Purchased Assets no later than three (3) Business Days prior to such Early Repurchase Date; and
  - (B) on such Early Repurchase Date Seller pays to Buyer an amount equal to the sum of the Repurchase Price for such Transaction(s), and any other amounts payable under the Program Documents (including, without limitation, Section 3(h) of this Agreement) with respect to such Transaction(s) against transfer to Seller or its agent of such Purchased Assets, all in accordance with Section 3(c)(i).

(d) Notwithstanding anything contained in this Agreement to the contrary, provided all of the Funding Period Extension Conditions shall have been satisfied, Buyer may, in its sole and absolute discretion, extend the Funding Expiration Date for a one (1) year period ending on the one-year anniversary date of the then current Funding Expiration Date (or if such day is not a Business Day, the immediately succeeding Business Day). For purposes of the preceding sentence, the "Funding Period Extension Conditions" shall be deemed to have been satisfied if:

- (i) Seller shall have given Buyer written notice, not less than sixty (60) days and no more than ninety (90) days, prior to the scheduled Funding Expiration Date, of Seller's desire to extend the Funding Expiration Date;

- (ii) no Default or Event of Default under this Agreement shall have occurred and be continuing as of the scheduled Funding Expiration Date;
- (iii) Seller, each Affiliated Originator, Pledgor and Guarantor are in compliance with all covenants and conditions in the Program Documents as of the scheduled Funding Expiration Date;
- (iv) the representations and warranties made by Seller, Guarantor, Pledgor and each Affiliated Originator in the Program Documents shall be true and correct in all material respects as of the scheduled Funding Expiration Date;
- (v) Seller has paid to Buyer the Extension Fee on or before the scheduled Funding Expiration Date; and
- (vi) solely with respect to any such extension of the Funding Expiration Date to any date occurring on or after November 10, 2026, Seller executes and delivers (A) any supplements, modifications, addendums, opinions or other documents as may be necessary in Buyer's sole and absolute discretion, in order to cause this Agreement and the Transactions contemplated hereby to qualify for, comply with the provisions of, or otherwise satisfy, maintain or preserve the criteria for safe harbor treatment under the Bankruptcy Code, including, without limitation, such opinions from counsel to Seller as Buyer may require with respect to the applicability of safe harbor treatment under the Bankruptcy Code and (B) such updated information required by Buyer in order to deliver to Seller an amended and restated Confirmation in the form of Exhibit B.

With respect to any extension contemplated by Section 3(d)(vi), Buyer, upon receipt of information delivered by Seller pursuant to Section 3(d)(vi)(B), shall deliver to Seller an amended and restated Confirmation, and each of the following events shall be deemed to have occurred concurrently: (A) each of the Transactions outstanding on such date shall be deemed to have been terminated, (B) a new Transaction with respect to each outstanding Purchased Asset shall be deemed to have been entered into on the same terms as the original Transaction with respect to such Purchased Asset, with such updates as reflected in the amended and restated Confirmation and (C) Seller's previous satisfaction of the Transaction Conditions Precedent for each original Transaction shall be deemed to satisfy the Transaction Conditions Precedent with respect to the related new Transaction.

(e) In addition, Seller may terminate this Agreement and the other Program Documents on any date prior to the then scheduled Facility Termination Date (the "Early Facility Termination Date"), provided that:

- (i) Seller notifies Buyer in writing at least thirty (30) days before the Early Facility Termination Date of its intent to terminate this Agreement and the other Program Documents;

- (ii) subject to the provisions set forth in Section 3(c)(i), Seller repurchases all of the Purchased Assets then held by Buyer on the Early Facility Termination Date; and
- (iii) Seller pays the Price Differential and all other Repurchase Obligations on or prior to the Early Facility Termination Date.

(f) Benchmark Replacement.

- (i) If at any time a Transaction is outstanding as a SOFR Transaction and Buyer has determined, in its sole but good faith discretion (which determination shall be conclusive and binding upon Seller absent manifest error) that a Benchmark Transition Event has occurred and the applicable SOFR Index has been succeeded by an Unadjusted Benchmark Replacement, then such Transaction shall be converted from a SOFR Transaction to a Benchmark Replacement Transaction in accordance with clause (vi) below. Buyer shall provide notice of the foregoing conversion to a Benchmark Replacement Transaction to Seller (which may be by electronic mail) at least one (1) U.S. Government Securities Business Day prior to the next succeeding Pricing Rate Determination Date. If such notice is given, such Transaction shall be converted, as of the Benchmark Replacement Date, to a Benchmark Replacement Transaction; provided that Buyer shall not give any such notice converting any Transaction to a Benchmark Replacement Transaction unless Buyer is also then converting the pricing rate or interest rate payable by substantially all of its similarly situated customers under similar repurchase and credit facilities to a pricing rate or interest rate based on such Benchmark Replacement. Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller have the right to convert (1) a SOFR Transaction for which interest thereon accrues at a rate of interest based upon Term SOFR to a SOFR Transaction for which interest thereon accrues at a rate of interest based upon SOFR Average, (2) a SOFR Transaction to a Benchmark Replacement Transaction, or (3) to convert a Benchmark Replacement Transaction to a SOFR Transaction or a Base Rate Transaction.
- (ii) If at any time a Transaction is outstanding as a SOFR Transaction or Benchmark Replacement Transaction and Buyer has determined in its sole but good faith discretion that a Benchmark Transition Event and the related Benchmark Replacement Date has occurred (which determination shall be conclusive and binding upon Seller absent manifest error) and the applicable SOFR Index or the Unadjusted Benchmark Replacement, as applicable, has not been succeeded by an Unadjusted Benchmark Replacement or other index, as applicable (such occurrence, together with an occurrence described in the definition of “Term SOFR”, the commencement of a Benchmark Unavailability Period”, which shall end at the time that Buyer provides notice, if applicable, pursuant to Section

3(f)(iii)), then Buyer shall give notice of such determination to Seller (which may be by electronic mail) at least one (1) U.S. Government Securities Business Day prior to the next succeeding Pricing Rate Determination Date. If such notice is given, such Transaction shall bear interest based on the Base Rate beginning on the first day of the Pricing Rate Period for which SOFR Index or the Unadjusted Benchmark Replacement, as applicable, was not available (and for each subsequent Pricing Rate Period until Buyer provides notice, if applicable, pursuant to Section 3(f)(iii)); provided that Buyer shall not give any such notice converting any Transaction to a Base Rate Transaction unless Buyer is also then converting the pricing rate or interest rate payable by substantially all of its similarly situated customers under similar repurchase and credit facilities to a pricing rate or interest rate based on the Base Rate. Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller have the right to convert, (1) a SOFR Transaction for which interest thereon accrues at a rate of interest based upon Term SOFR to a SOFR Transaction for which interest thereon accrues at a rate of interest based upon SOFR Average, (2) a SOFR Transaction to a Base Rate Transaction (3) a Base Rate Transaction to a SOFR Transaction (4) a Benchmark Replacement Transaction to a Base Rate Transaction (5) a Base Rate Transaction to a Benchmark Replacement Transaction.

(iii) If a Transaction is bearing interest based on the Base Rate but thereafter;

- (A) Buyer shall determine, in its sole but good faith discretion (which determination shall be conclusive and binding upon Seller absent manifest error) that the event(s) or circumstance(s) which resulted in such conversion to the Base Rate shall no longer be applicable, Buyer shall give notice of such determination to Seller (which may be by electronic mail), at least one (1) U.S. Government Securities Business Day prior to the next succeeding Pricing Rate Determination Date. If such notice is given, such Transaction shall bear interest based on the SOFR Index beginning on the first day of the next succeeding Pricing Rate Period; or
- (B) Buyer shall determine, in its sole but good faith discretion (which determination shall be conclusive and binding upon Seller absent manifest error) that the SOFR Index has been succeeded by an Unadjusted Benchmark Replacement, Buyer shall give notice of such determination to Seller (which may be by electronic mail), at least one (1) U.S. Government Securities Business Day prior to the next succeeding Pricing Rate Determination Date. If such notice is given such Transaction shall be converted to a Benchmark Replacement Transaction on the first day of the next succeeding Pricing Rate Period; provided that Buyer shall not give any such notice converting any Transaction to a Benchmark Replacement

Transaction unless Buyer is also then converting the pricing rate or interest rate payable by substantially all of its similarly situated customers under similar repurchase and credit facilities to a pricing rate or interest rate based on such Benchmark Replacement. Notwithstanding any provision of this Agreement to the contrary, in no event shall Seller have the right to elect to have a Transaction bear interest either based on the SOFR Index or based on the Base Rate or the Unadjusted Benchmark Replacement.

- (iv) If any requirement of law or any change therein or in the interpretation or application thereof, shall hereafter make it unlawful for Buyer in good faith to make or maintain the portion of any Transaction bearing interest based on the SOFR Index or the Unadjusted Benchmark Replacement, then (A) any obligation of Buyer hereunder to enter into or continue any Transaction bearing interest based on the SOFR Index or the Unadjusted Benchmark Replacement, as applicable, shall be canceled forthwith and (B) subject to the terms and conditions in Section 3(f)(i) with respect to any conversion to the Benchmark Replacement, each Transaction shall automatically bear interest at the Base Rate on the first day of the immediately succeeding Pricing Rate Period or within such earlier period as required by applicable law. If any such conversion of a Transaction occurs on a day which is not the last day of the then current Pricing Rate Period with respect to such Transaction, Seller shall pay to Buyer such amounts, if any, as may be required pursuant to Section 3(h) of this Agreement.
- (v) Seller hereby agrees promptly to, within ten (10) days of Buyer's written demand therefor, (A) pay Buyer any additional amounts necessary to compensate Buyer for any reasonable out-of-pocket costs incurred by Buyer in making any conversion in accordance with this Agreement, including, without limitation, any actual breakage costs (excluding loss of profit) incurred by Buyer to lenders in connection with termination of transactions related to funds obtained by it in order to enter into or maintain Transactions hereunder (provided that Buyer will not require Seller to pay any such additional amounts under this clause (A) unless Buyer is also requiring substantially all of its similarly situated customers under similar repurchase and credit facilities to pay such additional amounts in connection with the conversion of pricing rates and/or interest rates) and (B) deliver to Buyer, at Seller's cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances and such other instruments as Buyer may reasonably require from time to time in order to make such technical, administrative or operational changes (including changes to timing and frequency of determining rates and making payments of interest, and other administrative matters) that Buyer decides may be appropriate to reflect the adoption of an alternative index in a manner as Buyer determines is reasonably necessary to implement the alternative index. Upon written demand from Seller, Buyer shall disclose any additional costs incurred by Buyer in making the conversion. Buyer's written notice of such costs, as certified to Seller, shall be conclusive absent manifest error.



- (vi) Notwithstanding anything to the contrary herein or in any other Program Document:
- (A) If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred in respect of any determination of the Benchmark on any date, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Program Document in respect of such determination on such date and all determinations on all subsequent dates. Such Benchmark Replacement will become effective at 5:00 p.m. on the fifth (5th) Business Day after Buyer has posted such proposed amendment to Seller.
  - (B) In connection with the implementation of a Benchmark Replacement, Buyer will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Program Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.
  - (C) Buyer will promptly notify the Seller (which may be by electronic mail) of (i) any occurrence of a Benchmark Transition Event and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, and (iv) the removal or reinstatement of any tenor of Term SOFR pursuant to clause (D) below. Any determination, decision or election that may be made by the Buyer pursuant to this Section 3(f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from Seller, except as expressly set forth herein.
  - (D) At any time and with respect to any Pricing Rate Period, if the Benchmark at such time is Term SOFR and Term SOFR for the applicable tenor is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Buyer in its reasonable discretion, Buyer may (i) modify the definition of "Pricing Rate Period" for all determinations of

interest at or after such time to remove such unavailable tenor and (ii) if Term SOFR, as applicable, for the applicable tenor is displayed on such screen or information service after its removal pursuant to clause (i) above, modify the definition of "Pricing Rate Period" for all determinations of interest at or after such time to reinstate such previously removed tenor.

(g) SOFR Index.

- (i) SOFR Adjustment Conforming Changes. Buyer will have the right, from time to time and in Buyer's sole discretion, to make SOFR Adjustment Conforming Changes, including, without limitation, in connection with a Term SOFR Transition Event. Notwithstanding anything to the contrary in this Agreement or in any other Program Document, any amendments to this Agreement or the other Program Documents implementing such SOFR Adjustment Conforming Changes will become effective without any further action or consent by Seller. Buyer will promptly notify the Seller of the effectiveness of any SOFR Adjustment Conforming Changes.
- (ii) SOFR Transition. If a Term SOFR Transition Event occurs:
  - (A) Buyer will provide notice to Seller in writing (which may be by electronic mail) of the Term SOFR Transition Date before the first Remittance Date following the Term SOFR Transition Date.
  - (B) Beginning on the first day of the Pricing Rate Period immediately following the Term SOFR Transition Date and during each Pricing Rate Period thereafter, interest will accrue at the Pricing Rate calculated using SOFR Average as specified in such notice, without the necessity of any amendment or other modification of this Agreement or any other Program Document.
  - (C) Standards for SOFR Decisions and Determinations. Any determination, decision or election that may be made by Buyer pursuant to this Section 3(g), including, without limitation, any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date, any SOFR Adjustment Conforming Changes or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding and may be made in its sole discretion and without consent from Seller.

(h) Upon demand by Buyer, Seller shall indemnify Buyer and hold Buyer harmless from any net actual, out-of-pocket loss or expense (not to include any lost profit or opportunity) (including, without limitation, reasonable actual attorneys' fees and disbursements) which Buyer sustains or incurs as a consequence of (i) default by Seller in terminating any Transaction after Seller has given a notice in accordance with Section 3(c)(ii) of a termination of a Transaction,

(ii) any payment of the Repurchase Price with respect to a Purchased Asset on any day other than a Remittance Date or the Repurchase Date (or the Early Repurchase Date or the Early Facility Termination Date, as applicable) with respect to such Purchased Asset (including, without limitation, any such actual, out-of-pocket loss or expense arising from the reemployment of funds obtained by Buyer to maintain Transactions hereunder or from customary and reasonable fees payable to terminate the deposits from which such funds were obtained), (iii) conversion of any Transaction to a Benchmark Replacement Transaction pursuant to Section 3(f)(iv) of this Agreement on a day which is not the last day of the then current Pricing Rate Period or (iv) any conversion of the Pricing Rate to the Benchmark Replacement or the Base Rate for any reason on a day that is not the last day of the then current Pricing Rate Period. A certificate as to such actual costs, losses, damages and expenses, setting forth the calculations therefor shall be prima facie evidence of the information set forth therein in the absence of manifest error.

(i) If after the date of this Agreement the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any Governmental Authority or compliance by Buyer with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority having jurisdiction over Buyer made subsequent to the date hereof:

- (i) shall subject Buyer to any Tax (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;
- (ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of Buyer which is not otherwise included in the determination of the Benchmark hereunder; or
- (iii) shall impose on Buyer any other condition (other than Taxes);

and the result of any of the foregoing is to increase the cost to Buyer, by an amount which Buyer deems, in its sole and absolute discretion, to be material, of entering into, continuing or maintaining Transactions or to reduce any amount receivable under the Program Documents in respect thereof; then, in any such case, Seller shall, within five (5) Business Days after written notice from Buyer, pay Buyer any additional amounts necessary to compensate Buyer for such increased cost or reduced amount receivable. If Buyer becomes entitled to claim any additional amounts pursuant to this Section 3(i), it shall notify Seller of the event by reason of which it has become so entitled. A certificate as to the calculation of any additional amounts payable pursuant to this subsection shall be prima facie evidence of such additional amounts in the absence of manifest error. Failure or delay on the part of Buyer to demand compensation under this Section 3(i) shall not constitute a waiver of Buyer's right to demand such compensation; provided that, notwithstanding the foregoing, in no event shall Seller be liable for additional amounts incurred by Buyer more than twelve (12) months before such notice. This covenant shall survive the termination of this Agreement and the repurchase by Seller of any or all Purchased Assets.

(j) If Buyer shall have determined that the adoption of or any change after the date of this Agreement in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by Buyer or any entity controlling Buyer with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof does or shall have the effect of increasing the amount of capital to be held by Buyer in respect of any Transaction hereunder or reducing the rate of return on Buyer's or such entity's capital as a consequence of its obligations hereunder to a level below that which Buyer or such entity could have achieved but for such adoption, change or compliance (taking into consideration Buyer's or such entity's policies with respect to capital adequacy) by an amount deemed by Buyer to be material, then from time to time, Seller shall, within five (5) Business Days after written notice from Buyer, pay to Buyer such additional amount or amounts as will compensate Buyer for such reduction. A certificate as to the calculation of any additional amounts payable pursuant to this subsection shall be prima facie evidence of such additional amounts in the absence of manifest error. Failure or delay on the part of Buyer to demand compensation under this Section 3(j) shall not constitute a waiver of Buyer's right to demand such compensation; provided that, notwithstanding the foregoing, in no event shall Seller be liable for additional amounts incurred by Buyer more than 180 days before such notice. This covenant shall survive the termination of this Agreement and the repurchase by Seller of any or all of the Purchased Asset.

#### **4. MARGIN MAINTENANCE; MARGIN EXCESS**

(a) If, on any Business Day, a Purchase Price Margin Deficit greater than or equal to the Margin Threshold is continuing, then Seller shall, within three (3) Business Days after written notice from Buyer (a "Purchase Price Margin Call"), transfer to Buyer immediately available funds in an amount such that a Purchase Price Margin Deficit no longer exists. Any additional cash transferred to Buyer pursuant to this Section 4(a) with respect to the Purchased Assets shall be applied by Buyer, as determined by Buyer in its sole discretion, to reduce such Purchase Price Margin Deficit.

(b) The failure of Buyer, on any one or more occasions, to exercise its rights under this Section 4, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of Buyer to do so at a later date. Seller and Buyer each agree that a failure or delay by Buyer to exercise its rights under this Section 4 shall not limit or waive Buyer's rights under this Agreement or otherwise existing by law or in any way create additional rights for Seller. Notwithstanding the foregoing, Buyer retains the right, in its sole discretion, to make a Purchase Price Margin Call in accordance with the provisions of this Section 4.

(c) As of any Business Day prior to the Funding Expiration Date, with respect to any Purchase Price Margin Deficit Asset, so long as (i) no Default or Event of Default has occurred and is continuing, (ii) no Purchase Price Margin Deficit exists and (iii) based on Buyer's determination of the Purchased Asset Value of such Purchase Price Margin Deficit Asset in connection with a Margin Deficit Revaluation Request, the outstanding Purchase Price for such Purchase Price Margin Deficit Asset is less than the lesser of (x) the product of (A) the

outstanding principal balance of the related Whole Loan, A-Note or Eligible Participation Interest, as applicable, *multiplied by* (B) the UPB Applicable Pricing Percentage or such lower number that was used to calculate the Purchase Price on the Purchase Date and (y) the product of (A) the Purchased Asset Value for such Purchased Asset *multiplied by* (B) the Property Value Applicable Pricing Percentage or such lower number that was used to calculate the Purchase Price on the Purchase Date (a “Purchase Price Margin Excess”), then Seller may deliver a written request in the form of Exhibit K (each, a “Purchase Price Margin Excess Request”) that Buyer transfer cash to Seller in an amount up to such Purchase Price Margin Excess. Buyer may, in its sole and absolute discretion, elect to transfer such cash to Seller, it being understood that upon the transfer of such cash the Purchase Price of such Purchase Price Margin Deficit Asset will be increased on a dollar for dollar basis by an amount equal to the amount so transferred; provided that, notwithstanding the foregoing, (x) any such Purchase Price Margin Excess requested must at least equal \$1,000,000 and (y) no such transfer of cash shall, in any event, cause the Purchase Price with respect to such Purchased Asset to exceed the Purchase Price outstanding with respect to such Purchase Price Margin Deficit Asset immediately prior to the related Purchase Price Margin Call. In the event Seller desires to request that Buyer transfer some or all of the Purchase Price Margin Excess with respect to any individual Purchased Asset to Seller, Seller shall deliver to Buyer a written request with respect thereto; provided that, Seller may request no more than two (2) increases in Purchase Price related to Purchase Price Margin Excess in the aggregate in any calendar month. Buyer shall endeavor to transfer such funds to Seller (or respond in writing with its rejection or any disagreement as to such request) within seven (7) Business Days of Buyer’s receipt of Seller’s written request. If Buyer elects in its sole and absolute discretion to transfer such funds to Seller, Buyer shall promptly deliver to Seller an amended and restated Confirmation for the applicable Purchased Asset which reflects the increase in the Purchase Price and Seller shall promptly, but in any event within three (3) Business Days, execute and return such amended and restated Confirmation to Buyer.

## 5. INCOME PAYMENTS AND PRINCIPAL PAYMENTS

(a) The Repo Collection Account shall be established by Seller at Account Bank. Buyer shall have sole dominion and control over the Repo Collection Account. All Income (other than Servicer Income) in respect of the Purchased Assets shall be deposited directly into the Servicer Account within two (2) Business Days of receipt thereof and transferred by the Servicer to the Repo Collection Account on the Servicer Remittance Date. All such amounts transferred into the Repo Collection Account shall be remitted by Account Bank in accordance with the applicable provisions of Sections 5(c), 5(d), and 5(e) of this Agreement.

(b) With respect to each Purchased Asset, Seller shall deliver, or cause to be delivered to the Custodian, a Redirection Letter. Upon the occurrence of an Event of Default, Buyer may deliver such Redirection Letter to the Mortgagor or obligor under the related Purchased Asset. If a Mortgagor, servicer, borrower or other obligor forwards any Income (other than Servicer Income) with respect to a Purchased Asset to Seller or any of its Affiliates rather than directly to a Collection Account or the Servicer Account, the applicable Servicer or the Repo Collection Account, Seller shall (i) deliver an additional Redirection Letter and make other commercially reasonable efforts to cause such Mortgagor, servicer, borrower or other obligor to forward such amounts directly to the applicable Servicer or the Servicer Account, a Collection Account or the Repo Collection Account, (ii) hold such amounts in trust for the benefit of Buyer and (iii) promptly, but in any event within two (2) Business Days, deposit in the Servicer Account, a Collection Account or the Repo Collection Account any portion of such amounts constituting Income (other than Servicer Income).

(c) From the Closing Date and until the Funding Expiration Date, so long as no Default or Event of Default shall have occurred and be continuing, all Income in respect of the Purchased Assets received by the applicable Servicer during each Pricing Rate Period and on deposit in the Repo Collection Account on the Remittance Date shall be applied by Account Bank on the related Remittance Date in the following order of priority:

- (i) *first*, to remit to (a) Custodian an amount equal to any accrued and unpaid custodial fees and expenses and (b) Account Bank and Servicer an amount equal to the depository fee and any unpaid Qualified Servicing Expenses (to the extent not retained by Servicer), if any, respectively, due and payable on such Remittance Date;
- (ii) *second*, to remit to Buyer an amount equal to the Price Differential which has accrued and is outstanding in respect of all Purchased Assets as of such Remittance Date;
- (iii) *third*, solely from Interest Income, to remit to Seller an amount equal to any Permitted REIT Distributions;
- (iv) *fourth*, to remit to Buyer an amount equal to any unpaid fees, expenses and indemnity amounts due from Seller under the Program Documents;
- (v) *fifth*, to make a payment to Buyer on account of any uncured Purchase Price Margin Deficit; and
- (vi) *sixth*, to remit to Seller the remainder, if any, for (a) the purpose of acquiring additional Eligible Assets including payment of associated fees and expenses and (b) equity distributions, in each case as permitted pursuant to the terms of the Program Documents.

(d) At any time after the Funding Expiration Date, so long as no Default or Event of Default shall have occurred and be continuing, all Income in respect of the Purchased Assets received by the applicable Servicer during each Pricing Rate Period and on deposit in the Repo Collection Account on the Remittance Date shall be applied by Account Bank on the related Remittance Date in the following order of priority:

- (i) *first*, to remit to (a) Custodian an amount equal to any accrued and unpaid custodial fees and expenses and (b) Account Bank and Servicer an amount equal to the depository fee and any unpaid Qualified Servicing Expenses (to the extent not retained by Servicer), if any, respectively, due and payable on such Remittance Date;

- (ii) *second*, to remit to Buyer an amount equal to the Price Differential which has accrued and is outstanding in respect of all Purchased Assets as of such Remittance Date;
- (iii) *third*, solely from Interest Income, to remit to Seller an amount equal to any Permitted REIT Distributions;
- (iv) *fourth*, to remit to Buyer an amount equal to any unpaid fees, expenses and indemnity amounts due from Seller under the Program Documents;
- (v) *fifth*, to make a payment to Buyer on account of any uncured Purchase Price Margin Deficit;
- (vi) *sixth*, to remit to Buyer, with respect to any Purchased Asset for which a Principal Payment was received, the amount of such Principal Payment, to be applied to reduce the outstanding Purchase Price of such Purchased Asset; provided, that with respect to any Purchased Asset for which a Principal Payment was received in excess of the then outstanding Purchase Price for such Purchased Asset, all amounts paid to Buyer that represent the excess of the amount of such Principal Payment over the outstanding Purchase Price shall be applied by Buyer on a *pari passu* and pro rata basis to reduce the Purchase Price of the Purchased Assets remaining subject to Transactions; and
- (vii) *seventh*, to remit to Seller the remainder, if any.

(e) At any time that a Default or Event of Default shall have occurred and be continuing, all Income in respect of the Purchased Assets received by the applicable Servicer during each Pricing Rate Period and on deposit in the Repo Collection Account on the Remittance Date shall be applied by Account Bank on the related Remittance Date in the following order of priority:

- (i) *first*, to remit to (a) Custodian an amount equal to any accrued and unpaid custodial fees and expenses and (b) Account Bank and Servicer an amount equal to the depository fee and any unpaid Qualified Servicing Expenses (to the extent not retained by such Servicer), if any, respectively, due and payable as of such Remittance Date;
- (ii) *second*, to remit to Buyer an amount equal to the Price Differential which has accrued and is outstanding in respect of all Purchased Assets as of such Remittance Date;
- (iii) *third*, solely from Interest Income and so long as no Event of Default described in Section 14(a)(i), (ii), (iii), (vi), (vii) or (ix) has occurred and is continuing, to Seller an amount equal to any Permitted REIT Distributions;

- (iv) *fourth*, to remit to Buyer an amount equal to any unpaid fees, expenses and indemnity amounts due from Seller under the Program Documents;
- (v) *fifth*, to make a payment to Buyer on account of the Repurchase Price of the Purchased Assets until the Repurchase Price for all Purchased Assets has been reduced to zero; and
- (vi) *sixth*, to remit to Seller the remainder, if any.

(f) All Underlying Purchased Asset Reserves must be held and applied by the applicable Servicer in accordance with Section 28 hereof, the Servicing Agreement and the applicable Purchased Asset Documents.

## 6. SECURITY INTEREST

(a) Other than for U.S. federal and applicable state and local income and franchise tax purposes, Buyer and Seller intend that all Transactions hereunder be sales to Buyer of the Purchased Assets and not loans from Buyer to Seller secured by the Purchased Assets. However, in the event any such Transaction is deemed to be a loan, Seller hereby pledges all of its right, title and interest in, to and under and grants a first priority lien on, and security interest in, all of its right, title, and interest in the following property, whether now owned or hereafter acquired, now existing or hereafter created and wherever located to Buyer to secure the payment and performance of all amounts or obligations owing to Buyer pursuant to this Agreement and the other Program Documents:

- (i) the Purchased Assets, Servicing Agreements, Servicing Records, Servicing Rights, all insurance relating to the Purchased Assets, Underlying Purchased Asset Reserves and collection and escrow accounts relating to the Purchased Assets;
- (ii) all “general intangibles”, “accounts”, “instruments” and “chattel paper” as defined in the UCC relating to or constituting any and all of the foregoing; and
- (iii) all replacements, substitutions or distributions on or proceeds, payments, Income (other than Servicer Income) wherever located and profits of, and records (but excluding any financial models or other proprietary information) and files relating to any and all of any of the foregoing.

(b) For purposes of the grant of the security interest pursuant to Section 6 of this Agreement, this Agreement shall be deemed to constitute a security agreement under the New York Uniform Commercial Code (the “UCC”). Buyer shall have all of the rights and may exercise all of the remedies of a secured creditor under the UCC and the other laws of the State of New York. In furtherance of the foregoing, (a) Buyer, at Seller’s sole cost and expense, shall cause to be filed in such locations as may be necessary to perfect and maintain perfection and priority of the security interest granted hereby, UCC financing statements and continuation statements, and (b) Seller shall from time to time take such further actions as may be requested by Buyer to maintain and continue the perfection and priority of the security interest granted



hereby. Seller hereby irrevocably authorizes Buyer at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that (1) indicate the Collateral (i) as all assets of Seller or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (2) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Seller is an organization, the type of organization and any organization identification number issued to Seller.

(c) Buyer's security interest in a Purchased Asset, or the Collateral as a whole, shall terminate only upon (i) in the case of an individual Purchased Asset, the repurchase thereof in accordance with the terms of this Agreement and (ii) in the case of the Collateral as a whole, the repayment in full of all amounts payable to Buyer and termination of Seller's obligations under this Agreement and the other Program Documents. Upon any such termination, Buyer shall deliver to Seller such UCC termination statements and other release documents as may be commercially reasonable and to return the Purchased Assets to Seller.

(d) Seller hereby pledges to Buyer as security for the performance by Seller of its obligations under the Transactions and the Program Documents and hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to the Repo Collection Account and all amounts and property from time to time on deposit therein and all replacements, substitutions or distributions on or proceeds, payments and profits of, and records and files relating to, the Repo Collection Account.

## **7. PAYMENT, TRANSFER AND CUSTODY**

(a) On the Purchase Date for each Transaction, ownership of the Purchased Assets shall be transferred to Buyer or its designee (including Custodian) against the simultaneous transfer of the Purchase Price to an account of Seller specified in the Confirmation relating to such Transaction.

(b) On or before such Purchase Date, Seller shall deliver or cause to be delivered to Buyer or its designee the Mortgage Asset Schedule. In connection with each sale, transfer, conveyance and assignment of a Purchased Asset, on or prior to each Purchase Date with respect to such Purchased Asset, Seller shall deliver or cause to be delivered and released to Custodian the documents (collectively, the "Purchased Asset File") set forth below in this Section 7(b) and pertaining to each of the Purchased Assets identified in the Mortgage Asset Schedule delivered therewith (provided, that Seller shall deliver a certificate of an Authorized Representative of Seller certifying that any copies of documents delivered represent true and correct copies of the originals of such documents and, if applicable, that the originals of such documents have been submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located):

- (i) with respect to each Whole Loan and A-Note:

- (A) The original executed Mortgage Note (and, if applicable, one or more allonges) bearing all intervening endorsements (including those reflecting a complete, unbroken chain from the applicable Originator to Seller (if any)), endorsed “Pay to the order of [ ] without recourse” and signed in the name of Seller by an authorized Person (in the event that the Purchased Asset was acquired by Seller in a merger, the signature must be in the following form: “FS CREIT Finance NTX-1 LLC, successor by merger to [name of predecessor]”; or in the event that the Purchased Asset was acquired or originated by Seller while doing business under another name, the signature must be in the following form: “FS CREIT Finance NTX-1 LLC, formerly known as [previous name]”).
- (B) The original or a copy of each and every executed predecessor note to the Mortgage Note and the original or a copy of any and all historic amendments, modifications, spreaders, splitters, restatements and/or consolidations of such note(s), reflecting a complete, unbroken chain from the original lender to the applicable Originator (if any).
- (C) An original or copy of any guarantee executed in connection with the Mortgage Note (if any).
- (D) The original or certified (either by the county recorder or as set forth in the proviso to Section 7(b) and the last paragraph of this Section 7) copy of the Mortgage with evidence of recording thereon.
- (E) The original or certified (either by the county recorder or as set forth in the proviso to Section 7(b) and the last paragraph of this Section 7) copy of each and every executed predecessor mortgage to the Mortgage, including without limitation the original or certified copy of any and all historic amendments, modifications, spreaders, splitters, restatements and/or consolidations of such mortgage(s), reflecting a complete, unbroken chain from the original lender to the applicable Originator (if any).
- (F) The originals or certified (either by the county recorder or as set forth in the proviso to Section 7(b) and the last paragraph of this Section 7) copies of all assumption, modification, consolidation or extension agreements with evidence of recording thereon (if applicable).
- (G) The original Assignment of Mortgage in [ ] for each Purchased Asset, in form and substance acceptable for recording in the relevant jurisdiction, and in form and substance

otherwise acceptable to Buyer and signed in the name of Seller (in the event that the Purchased Asset was acquired by Seller in a merger, the signature must be in the following form: "FS CREIT Finance NTX-1 LLC, successor by merger to [name of predecessor]"; or in the event that the Purchased Asset was acquired or originated by Seller while doing business under another name, the signature must be in the following form: "FS CREIT Finance NTX-1 LLC, formerly known as [previous name]").

- (H) The originals or copies of all intervening assignments of mortgage, if any, evidencing a complete chain of title from the applicable Originator to Seller with evidence of recording thereon.
- (I) An original or copy of the attorney's opinion of title and abstract of title or the original or copy of the mortgagee title insurance policy (including all applicable endorsements), or if the mortgagee title insurance policy has not been issued, a copy of the irrevocable pro forma marked commitment to issue the same (including all applicable endorsements).
- (J) An original or copy of any security agreement, chattel mortgage or equivalent document executed in connection with the Purchased Asset (if any).
- (K) An original or copy of any assignment of leases and rents, if any, together with all intervening assignments of assignment of leases and rents, if any, evidencing a complete chain of title from the applicable Originator to Seller, with evidence of recording thereon.
- (L) The original assignment of assignment of leases and rents in [\_\_\_\_\_] for each Purchased Asset (if applicable), in form and substance acceptable for recording in the relevant jurisdiction, and in form and substance otherwise acceptable to Buyer and signed in the name of Seller (in the event that the Purchased Asset was acquired by Seller in a merger, the signature must be in the following form: "FS CREIT Finance NTX-1 LLC, successor by merger to [name of predecessor]"; or in the event that the Purchased Asset was acquired or originated by Seller while doing business under another name, the signature must be in the following form: "FS CREIT Finance NTX-1 LLC, formerly known as [previous name]").
- (M) A copy of the UCC financing statements, and all necessary UCC continuation statements, in each case, with evidence of filing thereon or unrecorded copies thereof certified by Seller that such financing statements have been sent for filing, and UCC assignments prepared by Seller in blank, which UCC assignments shall be in form and substance acceptable for filing in the applicable jurisdictions.

- (N) An original or copy of the environmental indemnity agreement or similar guaranty or indemnity (if any).
- (O) An original or copy of the loan agreement, intercreditor agreement, lockbox agreement, cash management agreement, deposit account agreement, deposit account control agreement and construction contract (in each case, if any).
- (P) An original omnibus assignment to [ ] signed in the name of Seller, of all other agreements and instruments relating to the Purchased Asset.
- (Q) A copy of the disbursement letter or settlement statement from the Mortgagor (or title company) to the original mortgagee (if any).
- (R) A copy of the Survey (if any).
- (S) A copy of the zoning report (if any).
- (T) A copy of the Mortgagor's, and, if applicable, any guarantor's opinion of counsel (if any).
- (U) A copy of any assignment of permits, contracts and other material agreements (if any).
- (V) A copy of the collateral assignment of interest rate cap agreement or an interest rate swap or similar arrangement (if any).
- (W) The original of all letters of credit issued and outstanding as security for such Purchased Asset (if any), with any modifications, amendments or endorsements necessary to permit Buyer to draw upon them when and if it is contractually permitted to do so pursuant to this Agreement (if any).
- (X) Copies or originals of any power of attorney related to the Purchased Asset.
- (Y) Copies or originals (including recorded copies or originals, as applicable) of any subordination, non-disturbance and attornment agreements or similar instruments related to the Mortgaged Property.

- (Z) Copies or originals of any ground lease and/or ground lease estoppels related to the Mortgaged Property.
- (AA) Copies or originals of all other material letters, agreements, instruments, certificates or other documents relating to the Purchased Asset or affecting the rights (including without limitation the security interests) of any holder thereof.
- (BB) A Redirection Letter.
- (CC) With respect to any A-Note, the original of the related Co-Lender Agreement.
- (ii) with respect to each Eligible Participation Interest:
  - (A) the original Participation Certificate identifying Seller as the registered holder thereof, and endorsed in blank;
  - (B) an original of each intervening assignment and assumption of such Eligible Participation Interest, if any, collectively evidencing a complete, unbroken chain from the applicable initial holder of such Eligible Participation Interest to Seller;
  - (C) an original assignment and assumption of such Eligible Participation Interest, executed by Seller in blank; and
  - (D) an original or a copy of the related Participation Agreement and any related intercreditor agreement or similar agreement.
- (iii) Any additional documents and information required to be delivered to Buyer or its designee (including Custodian) pursuant to this Agreement.

If the Mortgagor under each Purchased Asset or Servicer with respect to each Purchased Asset, as applicable, remits any sums required to be remitted to the holder of each Purchased Asset under the Purchased Asset Documents to Seller or any of its Affiliates, Seller or its Affiliate shall hold such sums in trust for the benefit of Buyer and remit such sums, within two (2) Business Days of receipt, to such Servicer for transfer to the Account Bank for deposit in the Repo Collection Account as set forth in Section 5 or as otherwise directed in the written notice signed by Seller and Buyer.

From time to time, Seller shall forward or cause each Servicer to forward to Custodian additional original documents or additional documents evidencing any assumption, modification, consolidation or extension of a Purchased Asset approved in accordance with the terms of this Agreement, and upon receipt of any such other documents, Custodian shall hold such other documents as Custodian shall request pursuant to the Custodial Agreement. With respect to any documents which have been delivered or are being delivered to recording offices for recording and have not been returned to Seller in time to permit their delivery hereunder at the time required, in lieu of delivering such original documents, Seller shall deliver to Custodian a true

copy thereof with an officer's certificate certifying that such copy is a true, correct and complete copy of the original, which has been transmitted for recordation. Seller shall deliver such original documents to Custodian promptly when they are received. With respect to all Purchased Assets delivered by Seller to Custodian on behalf of Buyer, Seller shall execute an omnibus power of attorney substantially in the form of Exhibit F attached hereto irrevocably appointing Buyer its attorney-in-fact with full power to (i) record the Assignment of Mortgage and assignment of assignment of leases and rents and (ii) take such other steps as may be reasonably necessary or desirable to enforce Buyer's rights against such Purchased Assets and the related Purchased Asset Files and the Servicing Records. Buyer shall deposit the Purchased Asset Files representing the Purchased Assets, or direct that the Purchased Asset Files be deposited directly, with Custodian. The Purchased Asset Files shall be maintained in accordance with the Custodial Agreement. Buyer may at any time in its sole and absolute discretion record any Assignment of Mortgage and assignment of assignment of leases and rents. Any Purchased Asset Files not delivered to Buyer or its designee (including Custodian) are and shall be held in trust by Seller or its designee for the benefit of Buyer as the owner thereof. Seller or its designee shall maintain a copy of the Purchased Asset File. The possession of the Purchased Asset File by Seller or its designee is at the will of Buyer for the sole purpose of servicing the related Purchased Asset, and such retention and possession by Seller or its designee is in a custodial capacity only. The books and records (including, without limitation, any computer records or tapes) of Seller or its designee shall be marked appropriately to reflect clearly the sale of the related Purchased Asset to Buyer. Seller or its designee (including Custodian) shall release its custody of the Purchased Asset Files only in accordance with written instructions from Buyer, unless such release is required as incidental to the servicing of the Purchased Assets, is in connection with a repurchase of any Purchased Asset by Seller or as otherwise required by law.

#### **8. SALE, TRANSFER, HYPOTHECATION OR PLEDGE OF PURCHASED ASSETS**

Title to all Purchased Assets shall pass to and vest in Buyer on the applicable Purchase Dates and, subject to the terms of the Program Documents, Buyer or its designee shall have free and unrestricted use of all Purchased Assets and be entitled to exercise all rights, privileges and options relating to the Purchased Assets as the owner thereof, including rights of subscription, conversion, exchange, substitution, voting, consent and approval, and to direct any servicer or trustee. Buyer or its designee may engage in repurchase transactions with the Purchased Assets or otherwise sell, pledge, repledge, transfer, hypothecate, or rehypothecate the Purchased Assets, all on terms that Buyer may determine; provided, that, (i) so long as no Event of Default shall have occurred and is continuing, no such transaction shall be with a Disqualified Institution and (ii) no such transaction shall affect the obligations of Buyer to transfer the Purchased Assets to Seller on each applicable Repurchase Date; provided, further, that Seller shall not be liable for any costs incurred by Buyer in connection with such hypothecation. In the event Buyer engages in a repurchase transaction with any of the Purchased Assets or otherwise pledges or hypothecates any of the Purchased Assets, Buyer shall have the right to assign to Buyer's counterparty any of the applicable representations or warranties herein and the remedies for breach thereof, as they relate to the Purchased Assets that are subject to such repurchase transaction.

## 9. RECOURSE

The obligations of Seller from time to time to pay the Repurchase Price, the Price Differential, and all other amounts due and obligations owing under this Agreement are full recourse obligations of Seller.

## 10. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that as of the Closing Date, as of each Purchase Date for the purchase of any Purchased Assets by Buyer from Seller and as of each date any Transaction is outstanding hereunder:

(a) Organization. Seller is duly formed, validly existing and in good standing under the laws and regulations of the state of Seller's formation and is duly licensed, qualified and in good standing in every state where such licensing or qualification is necessary for the transaction of Seller's business. Seller has the power to own and hold the assets it purports to own and hold, and to carry on its business as now being conducted and proposed to be conducted. Seller is duly authorized and has the power to execute and deliver this Agreement, to enter into the Transactions contemplated hereunder and to perform its obligations under this Agreement and the other Program Documents, and it has taken all necessary action to authorize such execution, delivery and performance.

(b) Due Execution; Enforceability; Transactions.

- (i) The Program Documents have been duly executed and delivered by Seller for good and valuable consideration. The Program Documents constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms subject to bankruptcy, insolvency and other limitations on creditors' rights generally and to equitable principles.
- (ii) Seller will engage in the Transactions contemplated hereunder as principal (or, if agreed in writing, in the form of an annex, exhibit or schedule hereto or otherwise, in advance of any Transactions by the other party hereto, as agent for a disclosed principal), and the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal).

(c) Non-Contravention; Consents. None of the execution, delivery and performance of the Program Documents, the consummation by Seller of the transactions contemplated by the Program Documents, including the Transactions contemplated hereunder (or any of them), nor compliance by Seller with the terms, conditions and provisions of the Program Documents (or any of them) will conflict with or result in a breach of any of the terms, conditions or provisions of (i) the organizational documents of Seller, (ii) any contractual obligation by which Seller is bound or the rights related to which have been assigned to Seller or the obligations under which have been assumed by Seller or to which the assets of Seller are subject or constitute a default thereunder, or result thereunder in the creation or imposition of any lien upon any of the assets of Seller, other than pursuant to the Program Documents, (iii) any judgment or order, writ, injunction, decree or demand of any court applicable to Seller, or (iv) any applicable

Requirement of Law. Seller has obtained all necessary authorizations, licenses, permits and other consents from Governmental Authorities required in connection with this Agreement and the Transactions contemplated hereunder, to acquire, own and sell the Purchased Assets and for the performance of its obligations under the Program Documents, and such authorizations, licenses, permits and other consents are in full force and effect.

(d) Litigation; Requirements of Law. There is no action, suit, proceeding, investigation, or arbitration pending or, to the best knowledge of Seller, threatened against Seller, Guarantor, any Affiliated Originator, Pledgor or any of their respective assets which could reasonably be expected to result in any Material Adverse Change, or which could reasonably be expected to have an adverse effect on the validity of the Program Documents or the Purchased Assets or any action taken or to be taken in connection with the obligations of Seller under any Program Documents. Seller is in compliance in all material respects with all Requirements of Law. None of Seller, Guarantor, Pledgor or any Affiliated Originator is in default in any material respect with respect to any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority.

(e) No Broker. Seller has not dealt with any broker, investment banker, agent, or other Person (other than Buyer or an Affiliate of Buyer) who may be entitled to any commission or compensation in connection with the sale of Purchased Assets pursuant to any of the Program Documents.

(f) Good Title to Purchased Assets. Immediately prior to the purchase of any Purchased Asset by Buyer from Seller, Seller owned such Purchased Asset free and clear of any lien, encumbrance or impediment to transfer (including any "adverse claim" as defined in Section 8-102(a)(1) of the UCC), and Seller is the record and beneficial owner of and has good and marketable title to and the right to sell and transfer such Purchased Asset to Buyer and, upon transfer of such Purchased Asset to Buyer, Buyer shall be the owner of such Purchased Asset free of any adverse claim, subject to the rights of Seller pursuant to the terms of this Agreement. If contrary to the intention of the parties hereto, any Transaction is characterized as a secured financing of the related Purchased Assets, the provisions of this Agreement are effective to create in favor of Buyer a valid security interest in all rights, title and interest of Seller in, to and under the Collateral related to such Purchased Assets to the extent such security interest can be perfected by filing or by delivery to and possession by Custodian, and Buyer shall have a valid, perfected first priority security interest in such Purchased Assets.

(g) No Default. No Default or Event of Default has occurred and is continuing under or with respect to the Program Documents. No other event or circumstance is outstanding which constitutes (or, with the expiration of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on any of Seller, Pledgor or any Affiliated Originator to which its assets are subject and which would result in any Material Adverse Change.



(h) Representations and Warranties Regarding the Purchased Assets; Delivery of Purchased Asset File. Each Purchased Asset sold in a Transaction hereunder conforms to the applicable representations and warranties set forth in Exhibit G-1 or Exhibit G-2, as applicable, as modified by any Approved Exception Report. It is understood and agreed that the representations and warranties set forth in Exhibit G-1 or Exhibit G-2, as modified by an Approved Exception Report, if any, shall survive delivery of the respective Purchased Asset File to Buyer or its designee (including Custodian) to the extent permitted by applicable law. With respect to each Purchased Asset, the Mortgage Note, the Mortgage, the Assignment of Mortgage and any other documents, in each case to the extent required to be delivered under this Agreement and the Custodial Agreement for such Purchased Asset, have been delivered to Buyer or Custodian on its behalf. Seller or its designee is in possession of a complete, true and accurate Purchased Asset File with respect to each Purchased Asset, except for such documents the originals of which have been delivered to Custodian and except as disclosed to and approved by Buyer in writing.

(i) Adequate Capitalization; No Fraudulent Transfer. Seller has, as of the Purchase Date, adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. Seller is generally able to pay, and as of the date hereof is paying, its debts as they come due. Seller is not insolvent nor will Seller be made insolvent by virtue of Seller's execution of or performance under any of the Program Documents within the meaning of the bankruptcy laws or the insolvency laws of any jurisdiction relevant to any such determination in respect of Seller. Seller has not entered into any Program Document or any Transaction pursuant thereto in contemplation of insolvency or with intent to hinder, delay or defraud any creditor.

(j) Consents. No consent, approval or other action of, or filing by Seller with, any Governmental Authority or any other Person is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of any of the Program Documents (other than consents, approvals and filings that have been obtained or made, as applicable).

(k) Ownership. The direct, and to the extent depicted, the indirect, ownership interests in Seller, Guarantor, Pledgor and each Affiliated Originator are as set forth on the organizational chart attached hereto as Exhibit H.

(l) Organizational Documents. Seller has delivered to Buyer certified copies of its organizational documents, together with all amendments thereto, if any.

(m) No Encumbrances. Subject to the terms of this Agreement and except for Permitted Liens and Title Exceptions, there are (i) no outstanding rights, options, warrants or agreements on the part of Seller for a purchase, sale or issuance, in connection with the Purchased Assets, and (ii) no agreements on the part of Seller to issue, sell or distribute the Purchased Assets.

(n) Investment Company. None of Seller, any Affiliated Originator, Pledgor or Guarantor is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended. Seller is relying on the exclusion contained in Section 3(c)(5)(C) thereof although there may be additional exclusions or exemptions available to Seller. Seller is not a "covered fund" for purposes of the Volcker Rule under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(o) Taxes. For U.S. federal and applicable state and local income and franchise tax purposes, Seller is classified, treated and reported as an entity whose separate existence is disregarded from that of its sole beneficial owner (as determined for U.S. federal income tax purposes), and is not classified, treated or reported as an association or publicly traded partnership taxable as a corporation or as a taxable mortgage pool, each as defined for U.S. federal income tax purposes. The sole beneficial owner of Seller for U.S. federal income tax purposes is a "United States person" as defined in Section 7701(a)(30) of the Code and a REIT. Seller has filed or caused to be filed all Tax returns which would be delinquent if they had not been filed on or before the date hereof, and has paid all income and other material Taxes that are due and payable on or before the date hereof and all assessments, fees and other governmental charges levied or imposed on it or its properties, income or assets otherwise due and payable, except for Taxes that are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP; no liens for Taxes not yet due and payable have been filed against any of Seller's assets; and no claims have been asserted in writing against Seller or any of its assets with respect to any Taxes, fees or other charges that are not being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP.

(p) ERISA. Seller does not have any ERISA Affiliates. Seller does not sponsor, maintain, contribute to, or have any liability or obligations, including by reason of any past ERISA Affiliates, with respect to any Plans or any Multiemployer Plans. None of the assets of the Seller, Guarantor or the Pledgor constitute Plan Assets.

(q) Judgments/Bankruptcy. Except as disclosed in writing to Buyer, there are no judgments against Seller or, to Seller's knowledge, Guarantor, Pledgor or any Affiliated Originator unsatisfied of record or docketed in any court located in the United States of America and no Insolvency Event has ever occurred with respect to Seller, Guarantor, Pledgor or any Affiliated Originator.

(r) Full and Accurate Disclosure. The information contained in the Program Documents executed and delivered by Seller, Guarantor, Pledgor or any Affiliated Originator, and the written statements furnished by or on behalf of Seller pursuant to the terms of the Program Documents, taken as a whole, do not contain any untrue statement of a material fact or, to Seller's knowledge, omit to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

(s) Financial Information. All financial data concerning Seller that has been delivered by or on behalf of Seller to Buyer fairly presents in all material respects the financial condition of Seller as of the dates thereof and has been prepared in accordance with GAAP to the extent applicable. Since the delivery of such data, except as otherwise disclosed in writing to Buyer, there has been no change in the financial position of Seller, or in the results of operations of Seller, which change is reasonably likely to result in a Material Adverse Change.

(t) Payment Instructions. On or before the Purchase Date for each Purchased Asset, Seller has instructed the related Mortgagor, borrower or other obligor, as applicable, in writing to pay all amounts due under such Purchased Asset to the applicable Servicer.

(u) Notice Address; Jurisdiction of Organization. On the date of this Agreement, Seller's address for notices is specified in Annex I hereto. Seller's jurisdiction of formation is Delaware. The location where Seller keeps its books and records, including all computer tapes and records relating to the Collateral, is Seller's address for notices specified in Annex I hereto.

(v) Embargoed Person; Patriot Act Compliance.

- (i) None of the funds or assets of Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable, constitute property of, or are beneficially owned directly or, to Seller's best knowledge, indirectly, by any Embargoed Person (as hereinafter defined) and no Embargoed Person has any direct interest, and to Seller's best knowledge, as of the date hereof, based upon reasonable inquiry by Seller, indirect interest, of any nature whatsoever in Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable, with the result that the investment in Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Transactions are in violation of law.
- (ii) None of Seller, Pledgor, any Affiliated Originator or Guarantor, nor any Person Controlling, Controlled by or under common Control with Seller, Pledgor, any Affiliated Originator or Guarantor is a "senior foreign political figure" or an "immediate family" member or "close associate" (as all such terms are defined below) of a senior foreign political figure within the meaning of the Patriot Act. For the purposes of this subsection, (i) "senior foreign political figure" means a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party or a senior executive of a foreign government-owned corporation, and such term also includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure, (ii) "immediate family" of a senior foreign political figure includes the figure's parents, siblings, spouse, children and in-laws, and (iii) "close associate" of a senior foreign political figure means a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

(w) Anti-Corruption. To the knowledge of Seller, none of the legal entities or individuals referred to in Section 12(p) of this Agreement is subject to any action, proceedings or formal investigation under any Anti-Corruption Rules applicable to it.

(x) Sanctionable Activity. Neither Seller, nor any of its Affiliates (including, without any limitation, Pledgor, any Affiliated Originator or Guarantor), nor any Persons acting on its or their behalf in connection with this Agreement (including its respective directors, officers or employees) is a Sanctioned Person. None of Seller, Pledgor, any Affiliated Originator or Guarantor is engaged in, and in the past five years has not engaged in, any Sanctionable Activity. Seller does not derive revenues or profits business involving any Sanctioned Persons or Sanctioned Countries.

## 11. NEGATIVE COVENANTS OF SELLER

On and as of the date hereof and each Purchase Date and until this Agreement is no longer in force with respect to any Transaction, Seller shall not, without the prior written consent of Buyer:

- (a) engage in any action or inaction which would directly or indirectly impair or adversely affect Buyer's title to the Purchased Assets;
- (b) transfer, assign, convey, grant, bargain, sell, set over, deliver or otherwise dispose of, or pledge or hypothecate, directly or indirectly, any interest in any Purchased Asset to any Person other than Buyer, or engage in repurchase transactions or similar transactions with respect to any Purchased Asset with any Person other than Buyer;
- (c) change its name or its jurisdiction of organization from the jurisdiction referred to in Section 10(u) unless it shall have provided Buyer thirty (30) days' prior written notice of such change;
- (d) create, incur or permit to exist any lien, encumbrance or security interest in or on any Purchased Asset, except for any (i) Liens created in favor of Buyer under this Agreement, (ii) Permitted Liens and (iii) Title Exceptions;
- (e) create, incur or permit to exist any lien, encumbrance or security interest in or on any of the other Collateral subject to the security interest granted by Seller pursuant to Section 6 of this Agreement, except for any (i) Liens created in favor of Buyer under this Agreement, (ii) Permitted Liens and (iii) Title Exceptions;
- (f) modify or terminate any of the organizational documents of Seller, including, without limitation, the Seller LLC Agreement;
- (g) consent or assent to or otherwise allow any Material Modification to any Purchased Asset without the prior written consent of Buyer, in its sole and absolute discretion;
- (h) admit any additional members in Seller, or permit the sole member of Seller to assign or transfer all or any portion of its membership interests in Seller;
- (i) take any action, file any Tax return, or make any election inconsistent with the classification and treatment of Seller, for U.S. federal and applicable state and local income and franchise tax purposes, as an entity whose separate existence is disregarded from that of its sole beneficial owner (as determined for U.S. federal income tax purposes), including making an election pursuant to Section 301.7701-3 of the Treasury Regulations to be classified as an association taxable as a corporation;

(j) after the occurrence and during the continuation of any Default or any Event of Default, make any distribution, payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any Capital Stock of Seller, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Seller except, in each case, so long as no Event of Default described in Section 14(a)(i), (ii), (iii), (vi), (vii) or (ix) has occurred and is continuing, for Permitted REIT Distributions solely from Interest Income;

(k) send a Redirection Letter or otherwise instruct any Mortgagor or the applicable Servicer, as applicable, to make any payment due on such Purchased Asset to any account other than the Repo Collection Account or Collection Account, as applicable;

(l) establish, sponsor, maintain, contribute to, have any obligation to contribute to, or incur any liability (contingent or otherwise) or obligations with respect to any Plans or any Multiemployer Plans; or

(m) opt in to UCC Article 8 security treatment of the Pledged LLC Interest (as defined in the Pledge Agreement) without either (i) the written consent of Buyer or (ii) the effective creation of UCC Article 8 "control" in favor of Buyer over the Pledged LLC Interest.

## 12. AFFIRMATIVE COVENANTS OF SELLER

(a) Seller shall promptly (and, in any event, within three (3) Business Days of obtaining knowledge thereof) notify Buyer of any Material Adverse Change; provided, however, that such notice shall not relieve Seller of its other obligations under this Agreement.

(b) Seller shall provide Buyer with copies of such documents as Buyer may reasonably request evidencing the truthfulness of the representations set forth in Section 10.

(c) Seller (i) shall defend the right, title and interest of Buyer in and to the Collateral against, and take such other action as is necessary to remove, all Liens, security interests, claims and demands of all Persons (other than security interests by or through Buyer, Permitted Liens and Title Exceptions) against the Purchased Assets or Collateral and (ii) shall, at Buyer's request, take all action necessary to ensure that Buyer will have a first priority security interest in the Purchased Assets in the event such Transactions are recharacterized as secured financings.

(d) Seller shall notify Buyer and Account Bank of the occurrence of any Default or Event of Default (and the steps, if any, being taken to remedy it) as soon as possible, but in no event later than three (3) Business Days, after obtaining actual knowledge of such event. Promptly upon a request by Buyer, if Buyer believes (acting in good faith) that a Default or Event of Default may have occurred and is continuing, Seller shall supply to Buyer a certificate signed by a director or a manager on its behalf, certifying that to the best of Seller's knowledge, no Default or Event of Default is continuing (or, if a Default or Event of Default is continuing, specifying the Default or Event of Default, as applicable, and the steps, if any, being taken to remedy it). In determining whether a Default or Event of Default is continuing, Buyer may, without any further investigation or enquiry, rely on a certificate issued by Seller as determinative, in the absence of express knowledge to the contrary, of the absence of any Default or Event of Default, as applicable.

(e) Seller shall promptly (and, in any event, not later than three (3) Business Days following receipt) deliver, or cause each Servicer, to deliver to Buyer (i) any notice of the occurrence of an event of default under any Purchased Asset Document, (ii) notice of the occurrence of any event that results in a Purchased Asset becoming a Defaulted Asset, (iii) notice of the occurrence of any event that results in a Purchased Asset no longer being an Eligible Asset, (iv) notice of the occurrence of any Credit Event and (v) any other information with respect to any Purchased Asset as may be reasonably requested by Buyer from time to time.

(f) Seller will permit Buyer or its designated representative to inspect Seller's records with respect to the Collateral and the conduct and operation of its business related thereto upon reasonable prior written notice from Buyer or its designated representative, at such reasonable times and with reasonable frequency, and to make copies of extracts of any and all thereof, subject to the terms of any confidentiality agreement between Buyer and Seller.

(g) At any time upon the reasonable request of Buyer, at the sole expense of Seller, Seller will promptly and duly execute and deliver to Buyer such further instruments and documents and take such further actions as Buyer may reasonably request for the purposes of obtaining or preserving the full benefits of this Agreement, including the first priority security interest granted hereunder and of the rights and powers herein granted (including, among other things, filing such UCC financing statements as Buyer may request). If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note, other instrument or chattel paper, such note, instrument or chattel paper shall be immediately delivered to Buyer, duly endorsed in a manner satisfactory to Buyer, to be held as Collateral pursuant to this Agreement, and the documents delivered in connection herewith.

(h) Seller (or a Servicer on its behalf) shall provide Buyer with the following financial and reporting information:

- (i) Within forty-five (45) days after the last day of each of the first three (3) calendar quarters in any fiscal year, Guarantor's consolidated and unaudited statements of operations for such quarter and statements of assets, liabilities and net assets as of the end of such quarter, in each case presented fairly in accordance with GAAP and accompanied by a compliance certificate in the form of Exhibit E hereto;
- (ii) Within one hundred and twenty (120) days after the last day of its fiscal year, Guarantor's consolidated and audited statements of operations, statements of cash flows and statements of changes in net assets for such year and statements of assets, liabilities and net assets as of the end of such year, in each case, audited by an independent certified public accountant of recognized national standing, presented fairly in accordance with GAAP and accompanied by a compliance certificate in the form of Exhibit E hereto;

- (iii) Within forty-five (45) days after the last day of each calendar quarter in any fiscal year, any and all property level financial information that is in the possession of Seller or any Affiliate of Seller (including without limitation operating statements and occupancy reports), together with a cover sheet by Seller or the applicable Servicer summarizing the property performance made available to Seller with respect to each Purchased Asset (or, with respect to a portfolio of Purchased Assets, a consolidated summary of performance of the entire portfolio), which cover sheet shall set forth the net operating income, debt yield calculation, debt service coverage ratio, occupancy, revenue per available room (for Hotel Purchased Assets) and sales/square footage (for retail properties) with respect to each Purchased Asset, and a loan status report containing a summary of all material changes to the property (including without limitation lease renewals/lapses, property improvements, appraisal updates and reserve balances);
- (iv) (A) Within fifteen (15) days after each anniversary of the applicable Purchase Date and (B) within forty-five (45) days after Buyer's request, in each case, a new Appraisal with respect to the Mortgaged Property relating to any Purchased Asset;
- (v) On the Servicer Remittance Date, the Monthly Remittance Report (as defined in the Servicing Agreement);
- (vi) On the 15<sup>th</sup> day of each month, a monthly portfolio report in the customary form prepared by Seller; and
- (vii) Any other report reasonably requested by Buyer.

(i) Seller shall at all times comply with all laws, ordinances, rules and regulations of any federal, state, municipal or other public authority having jurisdiction over Seller or any of its assets, except where a lack of such compliance would not be reasonably likely to result in a Material Adverse Change and Seller shall do, or cause to be done, all things reasonably necessary to preserve and maintain in full force and effect its legal existence, and all licenses material to its business.

(j) Seller shall at all times keep proper books of records and accounts in which full, true and correct entries shall be made of its transactions in accordance with GAAP and set aside on its books from its earnings for each fiscal year all such proper reserves in accordance with GAAP.

(k) Seller shall observe, perform and satisfy all the terms, provisions, covenants and conditions required to be observed, performed or satisfied by it, and shall pay when due all out-of-pocket costs, fees and expenses required to be paid by it, under the Program Documents. Seller shall pay and discharge all Taxes, levies, liens and other charges, if any, incurred by it or levied or imposed on its assets or on the Collateral as the same become due and payable and prior to the time the same would in any manner create any lien or charge upon the Collateral, except for any such Taxes as are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided in accordance with GAAP and excluding other Permitted Liens and Title Exceptions.

(l) Seller shall advise Buyer in writing of any change in Seller's name or organizational structure or the places where the books and records pertaining to the Purchased Assets are held not less than fifteen (15) Business Days prior to taking any such action.

(m) Seller will maintain records with respect to the Collateral and the conduct and operation of its business with no less a degree of prudence than if the Collateral were held by Seller for its own account and will furnish Buyer, upon reasonable request by Buyer or its designated representative, with information reasonably obtainable by Seller with respect to the Collateral and the conduct and operation of its business.

(n) Seller shall provide Buyer with reasonable access to any operating statements, any occupancy status and any other property level information, with respect to the Mortgaged Properties, plus any such additional reports in Seller's possession or control as Buyer may reasonably request with respect to the Mortgaged Properties.

(o)

- (i) Seller shall comply with the Patriot Act and all applicable requirements of any Governmental Authority having jurisdiction over Seller and/or the Purchased Assets, including those relating to money laundering and terrorism. Buyer shall have the right to audit Seller's compliance with the Patriot Act and all applicable requirements of any Governmental Authority having jurisdiction over Seller and/or the Purchased Assets, including those relating to money laundering and terrorism. In the event that Seller fails to comply with the Patriot Act or any such requirements of any Governmental Authority, then Buyer may, at its option, cause Seller to comply therewith and any and all costs and expenses incurred by Buyer in connection therewith shall be secured by the Collateral and shall be immediately due and payable.
- (ii) At all times, (i) none of the funds or other assets of Seller, Pledgor, any Affiliated Originator or Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Person subject to any Sanctions or subject to any trade restrictions under United States law, including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT Act) of 2001 and any Executive Orders or regulations promulgated thereunder, each as may be amended from time to time, with the result that the investment in Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law (each, an "Embargoed Person"), or any Transaction would be in violation of law, (ii) no Embargoed Person shall have any interest of any nature whatsoever in Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable, with the result that the investment in Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable



(whether directly or indirectly), would be prohibited by law or any Transaction would be in violation of law, and (iii) none of the funds of Seller, Pledgor, any Affiliated Originator or Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Seller, Pledgor any Affiliated Originator or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or any Transaction would be in violation of law. Seller has ascertained the identity of all persons and entities who have provided funds to capitalize Seller and has conducted verification procedures which are sufficient to establish the identity and source of such funds, in each case excluding public shareholders of Guarantor.

- (iii) Neither Seller nor, to Seller's knowledge, any owner of a direct or indirect interest in Seller (i) is subject to any Sanctions or listed on any Government Lists, (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) is currently under formal investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (2) U.S. Department of the Treasury's FINCEN list, (3) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Buyer notified Seller in writing is now included in "Government Lists", or (4) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Government Authority or pursuant to any Executive Order of the President of the United States of America that Buyer notified Seller in writing is now included in "Government Lists".

(iv) At all times, none of any of Seller, any Authorized Representatives of Seller, Pledgor, any Affiliated Originator or Guarantor, nor any Person Controlling, Controlled by or under common Control with any of Seller, Pledgor, any Affiliated Originator or Guarantor, nor any Person having a beneficial interest in, or for whom any of Seller, Pledgor, any Affiliated Originator or Guarantor is acting as agent or nominee in connection with the investment, is (a) a country, territory, person or entity named on an OFAC or FINCEN list, or is a Person that resides in or has a place of business in a country or territory named on such lists; (b) a Person residing in, or organized or chartered under the laws of a jurisdiction identified as non-cooperative by the Financial Action Task Force (“FATF”); or (c) a Person whose funds originate from or will be routed through , an account maintained at a foreign shell bank or “offshore bank.”

(p) Neither Seller, nor any of its directors, partners, members, shareholders, participants, officers, employees or agents, or, to the best knowledge of Seller, any of its Affiliates, their directors, partners, members, shareholders, participants, officers, employees or agents have been engaged in an activity or has (have) taken actions that would violate in any material respect any Anti-Corruption Rules applicable in any of the jurisdictions in which Seller and its Affiliates are operating. Moreover, Seller has taken and shall take at any time all measures it deems appropriate to prevent the risk of corruption, influence peddling, and bribery in violation of applicable law by itself, its officers, employees or agents as well as its Affiliates, their directors, partners, members, shareholders, participants, officers, employees or agents.

(q) Seller shall promptly notify Buyer of any action, suit, proceeding, investigation, or arbitration pending or, to the best knowledge of Seller, threatened against Seller, Guarantor, Pledgor, any Affiliated Originator or any of their respective assets that could reasonably be expected to result in any Material Adverse Change, or that could reasonably be expected to have an adverse effect on the validity of the Program Documents or the Purchased Assets or any action taken or to be taken in connection with the obligations of Seller under any Program Documents.

(r) [Reserved].

(s) Seller shall promptly deliver to Buyer an updated Beneficial Ownership Certification if any information therein changes.

(t) Seller shall not permit or authorize any Person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Transaction or other transaction(s) contemplated by this Agreement (i) in violation of any applicable Anti-Corruption Rules or (ii) to fund or facilitate any activities or business of, with, in or related to any Sanctioned Person or any Sanctioned Country, or in any other manner, in each case as will result in a violation of any Sanctions by, or would constitute Sanctionable Activity by, any Person participating in the transactions contemplated by this Agreement. Seller shall ensure that no Sanctioned Person will have any direct or indirect interest in any funds repaid or remitted by Seller in connection with any Transaction resulting in a violation of Sanctions by or a restriction on the use of such funds with respect to any Person. Seller shall maintain policies and procedures reasonably designed to ensure compliance with Sanctions and with the obligations under this Section 12(t). Seller shall supply to Buyer details of any claim, action, suit, proceedings or formal investigation against Seller with respect to any Sanctions (on becoming aware of them, and to the extent permitted by law).

### 13. SPECIAL PURPOSE ENTITY

Seller hereby represents and warrants to Buyer, and covenants with Buyer, that as of the date hereof and so long as any of the Program Documents shall remain in effect:

(a) It was formed solely for the purpose of (i) acquiring and holding, directly and subject to this Agreement, the Purchased Assets, (ii) engaging in the Transactions and (iii) performing its obligations under the Program Documents.

(b) It is and intends to remain solvent and it has paid and will pay its debts and liabilities (including employment and overhead expenses) from its own assets as the same shall become due.

(c) It has complied and will comply with the provisions of its certificate of formation and its limited liability company agreement.

(d) It has done or caused to be done and will, to the extent under its control, do all things necessary to observe all limited liability company formalities and to preserve its existence.

(e) It has maintained and will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates, its members and any other Person, and it will file its own tax returns, if any, that are required by law (except to the extent consolidation is required under GAAP (in the case of financial statements) or has been elected or is mandatory under the Code or the tax law of any State (in the case of Tax returns) or is required as a matter of law), provided, however, that Seller's assets may be included in a consolidated financial statements and Tax returns of Guarantor; provided, further, that, (i) an appropriate notation shall be made on such consolidated financial statement to indicate the separateness of Seller from Guarantor and to indicate that Seller's assets and liabilities are not available to satisfy the debts and other obligations of Guarantor or any other Person and (ii) such assets shall also be listed on Seller's own separate balance sheet.

(f) (i) It has been, is and will be and at all times will hold itself out to the public as a legal entity separate and distinct from any other Person (including any Affiliate), (ii) shall correct any known misunderstanding regarding its status as a separate entity, (iii) shall conduct business (A) in a reasonable and prudent manner and in accordance with its organizational documents and in a manner that is in compliance with the Program Documents and (B) in its own name, (iv) shall not identify itself as a division or part of any of its Affiliates, (v) shall maintain and utilize separate stationery, invoices and checks, and (vi) shall pay to any Affiliate that incurs costs for office space and administrative services that it uses, the amount of such costs allocable to its use of such office space and administrative services.

(g) It has not owned and will not own any property or any other assets other than the Collateral and cash and interests in hedges and Eligible Assets that are to be offered as Purchased Assets or that have been repurchased.

(h) It has not engaged and will not engage in any business other than the origination, acquisition, ownership, hedging, administering, financing and disposition of the Collateral in accordance with the applicable provisions of the Program Documents.

(i) It has not entered into, and will not enter into, any contract or agreement with any of its Affiliates, except upon terms and conditions that are substantially similar to those that would be available on an arm's-length basis with Persons other than an Affiliate.

(j) It has not incurred and will not incur any indebtedness or obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) obligations under the Program Documents; (ii) obligations under the Purchased Asset Documents; and (iii) liabilities, contingent or otherwise, which are normal and incidental to the origination, acquisition, ownership, hedging, financing and disposition of the Purchased Assets.

(k) It has not made and will not make any loans or advances (other than Eligible Assets) to any other Person, and shall not acquire obligations or securities of any member or any Affiliate of any member (other than in connection with the acquisition of the Eligible Assets) or any other Person.

(l) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(m) It shall not seek its dissolution, liquidation or winding up, in whole or in part, or suffer any Change of Control, Division, consolidation or merger with respect to itself.

(n) It will not commingle its funds and other assets with those of any of its Affiliates or any other Person.

(o) It has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any of its Affiliates or any other Person.

(p) It has not held and will not hold itself out to be responsible for the debts or obligations of any other Person.

(q) It shall not take any of the following actions without the affirmative vote of the Independent Manager: (i) permit its members to dissolve or liquidate Seller, in whole or in part; (ii) consolidate or merge with or into any other entity or convey or transfer all or substantially all of its properties and assets to any entity; or (iii) institute any proceeding to be adjudicated as bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code, or effect any similar procedure under any similar law, or consent to the filing of any such petition or to the appointment of a receiver, rehabilitator, conservator, liquidator, assignee, trustee or sequestrator (or other similar official) of Seller or of any substantial part of its property, or order the winding up or liquidation of its affairs, or make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the foregoing.

(r) It has no liabilities, contingent or otherwise, other than those normal and incidental to the origination, acquisition, ownership, hedging, financing and disposition of the Purchased Assets, except as contemplated by the Program Documents.

(s) It has not maintained and shall not maintain any employees.

(t) It shall at all times maintain at least one Independent Manager whose identity has been made known to Buyer and shall give prior written notice to Buyer of any resignation, withdrawal, discharge or replacement of such Independent Manager. For so long as any of Seller's Repurchase Obligations under this Agreement and the other Program Documents are outstanding, Seller shall not take any of the actions contemplated by Section 13(g), above without the affirmative vote of such Independent Manager. Seller shall not terminate, replace or otherwise remove any Independent Manager without the written consent of Buyer.

(u) It shall at all times discharge all obligations and liabilities due and owing by it from its own funds.

#### **14. EVENTS OF DEFAULT; REMEDIES**

(a) The occurrence of any of the following events shall be an Event of Default hereunder (each, an "Event of Default"):

- (i) Seller fails to repurchase any Purchased Asset upon the related Repurchase Date or repurchase all of the Purchased Assets on the Facility Termination Date;
- (ii) Seller fails to comply with Section 4 hereof;
- (iii) an Insolvency Event occurs with respect to Seller, Guarantor, Pledgor or any Affiliated Originator;
- (iv) Seller shall admit, in writing, its inability to, or its intention not to, perform any of its obligations hereunder or any Program Document;
- (v) either (A) the Program Documents shall for any reason not cause, or shall cease to cause, Buyer to be the owner free of any adverse claim (other than the rights of Seller pursuant to this Agreement) of any of the Purchased Assets, or (B) if a Transaction is recharacterized as a secured financing, the Program Documents with respect to any Transaction shall for any reason cease to create a valid first priority security interest in favor of Buyer in any of the Purchased Assets;
- (vi) failure of Buyer to receive on any Remittance Date the accrued and unpaid Price Differential (including, without limitation, in the event the Income paid or distributed on or in respect of the Purchased Assets is insufficient to make such payment and Seller does not make such payment or cause such payment to be made), which failure is not remedied within two (2) Business Days;

- (vii) failure of Seller to make any other payment owing to Buyer that has become due, whether by acceleration or otherwise under the terms of this Agreement, which failure is not remedied within the applicable period (in the case of a failure pursuant to Section 4) or five (5) Business Days (in the case of any other such failure);
- (viii) any governmental, regulatory, or self-regulatory authority shall have taken any action to remove, limit, restrict, suspend or terminate the rights, privileges, or operations of Seller, which suspension results in a Material Adverse Change;
- (ix) a Change of Control shall have occurred or a Division with respect to Seller, Guarantor, Pledgor or any Affiliated Originator shall have occurred;
- (x) any representation made by Seller, Guarantor, Pledgor or any Affiliated Originator shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated which incorrect or untrue representation is not cured within fifteen (15) days of the earlier of (i) the receipt of notice by Seller and (ii) knowledge of Seller; provided, however, that if such breach or failure is not reasonably susceptible of cure within such 15 day period, then provided that a cure is possible, Seller commences to cure within such 15 day period and diligently pursues such cure, such 15 day period shall be extended as reasonably necessary to complete the cure thereof for a period not to exceed 30 days; provided further that a representation made by Seller with respect to a Purchased Asset set forth on Exhibit G-1 or Exhibit G-2, as applicable, shall not be considered incorrect or untrue in any material respect if (A) Seller was unaware that such representation was incorrect or untrue when made and (B) within such fifteen (15) day period, Seller terminates the Transaction with respect to such Purchased Asset and deposits into an account of Buyer an amount equal to the Repurchase Price of such Purchased Asset without any required Exit Fee;
- (xi) Guarantor shall fail to comply with any of the financial covenants set forth in the Guaranty or shall have defaulted or failed to perform under the Guaranty;
- (xii) a final non-appealable judgment (other than a judgment to the extent covered by insurance) by any competent court in the United States of America for the payment of money in an amount greater than \$250,000 (in the case of Seller, Pledgor or any Affiliated Originator) or \$10,000,000 (in the case of Guarantor) shall have been rendered against Seller, Guarantor, Pledgor or any Affiliated Originator, and remained undischarged or unpaid for a period of (i) thirty (30) days with respect to Seller, Pledgor and any Affiliated Originator and (ii) sixty (60) days with respect to Guarantor, during which period execution of such judgment is not effectively stayed by bonding over or other means acceptable to Buyer;

- (xiii) Seller shall have breached Section IV.A of the Seller LLC Agreement.
- (xiv) Seller shall have defaulted or failed to perform under any note, indenture, loan agreement, guaranty, repurchase agreement, swap agreement or any other contract, agreement or transaction to which it is a party, which default (A) involves the failure to pay a monetary obligation in excess of \$250,000, or (B) permits the acceleration of the maturity of obligations in excess of \$250,000, by any other party to or beneficiary of such note, indenture, loan agreement, guaranty, repurchase agreement, swap agreement or other contract, agreement or transaction;
- (xv) if Seller, Guarantor, Pledgor or any Affiliated Originator shall breach or fail to perform any of the terms, covenants, obligations or conditions of this Agreement or any other Program Document, other than as specifically otherwise referred to in this definition of "Event of Default", and such breach or failure to perform is not remedied within thirty calendar (30) days after notice thereof to Seller by Buyer;
- (xvi) Guarantor shall have defaulted or failed to perform under any note, indenture, loan agreement, guaranty, repurchase agreement, swap agreement or any other contract, agreement or transaction to which it is a party, which default (A) involves the failure to pay a monetary obligation in excess of \$10,000,000, or (B) permits the acceleration of the maturity of obligations in excess of \$10,000,000, by any other party to or beneficiary of such note, indenture, loan agreement, guaranty, repurchase agreement, swap agreement or other contract, agreement or transaction;
- (xvii) any of Seller, Guarantor, Pledgor or any Affiliated Originator shall have committed a fraudulent act or made a misrepresentation in connection with this Agreement or any of the Program Documents;
- (xviii) the assets of Seller, Guarantor or Pledgor constitute Plan Assets;
- (xix) Seller or any Servicer that is an Affiliate of Seller consents or assents to or otherwise allows any Material Modification without the prior written consent of Buyer; or
- (xx) any breach of the provisions of this Agreement relating to Anti-Corruption Rules or Sanctions.

(b) If an Event of Default shall occur and be continuing, the following rights and remedies shall be available to Buyer:

- (i) At the option of Buyer, exercised by written notice to Seller (which option shall be deemed to have been exercised, even if no notice is given, immediately upon the occurrence of an Insolvency Event with respect to Seller, Guarantor, Pledgor or any Affiliated Originator), the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (the date on which such option is exercised or deemed to have been exercised being referred to hereinafter as the “Accelerated Repurchase Date”).
- (ii) If Buyer exercises or is deemed to have exercised the option referred to in Section 14(b)(i) of this Agreement:
  - (A) Seller’s obligations hereunder to repurchase all Purchased Assets shall become immediately due and payable on and as of the Accelerated Repurchase Date;
  - (B) to the extent permitted by applicable law, the Repurchase Price with respect to each Transaction (determined as of the Accelerated Repurchase Date) shall be increased by the aggregate amount obtained by daily application of, on a 360 day per year basis for the actual number of days during the period from and including the Accelerated Repurchase Date to but excluding the date of payment of the Repurchase Price (as so increased), (x) the Pricing Rate for such Transaction *times* (y) the Repurchase Price for such Transaction; and
  - (C) Custodian shall, upon the request of Buyer, deliver to Buyer all instruments, certificates and other documents then held by Custodian relating to the Purchased Assets.
- (iii) Buyer may, in accordance with Requirements of Law, (A) immediately sell, at a public or private sale in a commercially reasonable manner and at such price or prices as Buyer may reasonably deem satisfactory for any or all Purchased Assets or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Assets, to give Seller credit for such Purchased Assets in an amount equal to the market value of such Purchased Assets as determined by Buyer consistent with its and its Affiliates’ methods for determining the market value for similar commercial real estate portfolios against the aggregate unpaid Repurchase Price for such Purchased Assets and any other amounts owing by Seller under the Program Documents. The proceeds of any disposition of Purchased Assets effected pursuant to this Section 14(b)(iii) shall be applied in accordance with Section 5(e). If not liquidated sooner, on the second (2nd) anniversary of the occurrence of an Event of Default that is continuing, Buyer shall solicit and accept bids for and sell the Collateral until fully liquidated. For the avoidance of doubt, Buyer may be the purchaser in any sale under this Section 14(b)(iii).



- (iv) The parties acknowledge and agree that (A) the Purchased Assets subject to the Transactions hereunder are not instruments traded in a recognized market, and, in the absence of a generally recognized source for prices or bid or offer quotations for any Purchased Assets, Buyer may establish the source therefor in its sole discretion and (B) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Purchased Assets). The parties recognize that it may not be possible to purchase or sell all Purchased Assets on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Assets may not be liquid at such time. In view of the nature of the Purchased Assets, the parties agree that liquidation of a Transaction or the Purchased Assets does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyer may elect, in its sole discretion, the time and manner of liquidating any Purchased Assets, and nothing contained herein shall (1) obligate Buyer to liquidate any Purchased Assets on the occurrence and during the continuance of an Event of Default or to liquidate all Purchased Assets in the same manner or on the same Business Day or (2) constitute a waiver of any right or remedy of Buyer under the Program Documents.
- (v) Seller shall be liable to Buyer for (A) the amount of all expenses, including external legal fees and expenses, actually incurred by Buyer in connection with or as a consequence of an Event of Default, (B) all costs incurred in connection with covering transactions of the type described in Section 3(i), and (C) any other actual out-of-pocket loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default.
- (vi) Buyer shall have, in addition to its rights and remedies under the Program Documents, all of the rights and remedies provided by applicable federal, state, foreign, and local laws (including, without limitation, if the Transactions are characterized as secured financings, the rights and remedies of a secured party under the UCC of the State of New York, to the extent that the UCC is applicable, and the right to offset any mutual debt and claim), in equity, and under any of the Program Documents. Without limiting the generality of the foregoing, Buyer shall be entitled to set-off the proceeds of the liquidation of the Purchased Assets against all of Seller's obligations to Buyer under this Agreement, whether or not such obligations are then due, without prejudice to Buyer's right to recover any deficiency.
- (vii) Subject to the notice and grace periods set forth herein, Buyer may exercise any or all of the remedies available to Buyer immediately upon the occurrence of an Event of Default and at any time during the continuance thereof. All rights and remedies arising under the Program Documents, as amended from time to time, are cumulative and not exclusive of any other rights or remedies that Buyer may have.

- (viii) Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and Seller hereby expressly waives any defenses Seller might otherwise have to require Buyer to enforce its rights by judicial process. Seller also waives any defense Seller might otherwise have arising from the use of nonjudicial process, the disposition of any or all Purchased Assets, or any other election of remedies. Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.
- (ix) Buyer may, without prior notice to Seller, set off any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by Seller to Buyer or any Affiliate of Buyer against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by Buyer or any Affiliate of Buyer to Seller. Buyer will give notice to the other party of any set-off effected under this Section 14(b)(ix). If a sum or obligation is unascertained, Buyer may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this Section 14(b)(ix) shall be effective to create a charge or other security interest. This Section 14(b)(ix) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other rights to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- (x) Seller shall, within two (2) Business Days following Buyer's written request, execute and deliver to Buyer such documents, instruments, certificates, assignments and other writings, and do such other acts as Buyer may reasonably request for the purposes of assuring, perfecting and evidencing Buyer's ownership of the Purchased Assets, including, without limitation: (A) forwarding to Buyer or Buyer's designee (including, if applicable, Custodian), any payments Seller or any of its Affiliates receives on account of the Purchased Assets, in each case promptly upon receipt thereof; (B) delivering to Buyer or such designee any certificates, instruments, documents, notices or files evidencing or relating to the Purchased Assets that are in Seller's possession or under its control; and (C) delivering to Buyer underwriting summaries, credit memos, asset summaries, status reports or similar documents relating to the Purchased Assets and in Seller's possession or under its control.

- (xi) Seller hereby appoints Buyer, solely during the continuance of an Event of Default, as attorney-in-fact of Seller for the purpose of carrying out the provisions of this Agreement and taking any action and executing or endorsing any instruments that Buyer may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest.

## **15. SINGLE AGREEMENT**

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (a) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (b) that each of them shall be entitled to set-off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (c) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

## **16. RESERVED**

## **17. NOTICES AND OTHER COMMUNICATIONS**

All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) hand delivery, with proof of attempted delivery, (b) certified or registered United States mail, postage prepaid, (c) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (d) by email with confirmation of delivery provided that such emailed notice must also be delivered by one of the means set forth in (a), (b) or (c) above, to the address specified in Annex I hereto or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 17. A notice shall be deemed to have been given: (w) in the case of hand delivery, at the time of delivery, (x) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day, (y) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day, or (z) in the case of email, upon receipt of confirmation of delivery; provided that such emailed notice was also delivered as required in this Section 17. A party receiving a notice that does not comply with the technical requirements for notice under this Section 17 may elect to waive any deficiencies and treat the notice as having been properly given.

## **18. ENTIRE AGREEMENT; SEVERABILITY**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

## 19. SUCCESSORS AND ASSIGNS/VOTING AND CONTROL RIGHTS

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Seller may not assign or otherwise transfer any of its rights or obligations under this Agreement or the other Program Documents and under any Transaction without the prior written consent of Buyer.

(b) (i) Buyer may at any time grant to one or more banks, or other financial institutions (each, a “Participant”) participating interests in the Program Documents and/or any or all of the Transactions with five (5) days’ written notice to Seller; provided, however, that, so long as no Event of Default shall have occurred and be continuing, no participation shall be made to a Disqualified Institution without the prior written consent of Seller. In the event of any such grant by Buyer of a participation interest to a Participant, Buyer shall remain responsible for the performance of its obligations hereunder, and Seller shall continue to deal solely and directly with Buyer in connection with Buyer’s rights and obligations under this Agreement. Any agreement pursuant to which Buyer may grant such a participation interest shall provide that Buyer shall retain the sole right and responsibility to enforce the obligations of Seller hereunder and to approve any amendment, modification or waiver of any provision of this Agreement. An assignment or other transfer that is not permitted by subsection (c) or (d) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this Section 19(b).

(ii) In the event that Buyer grants participations in the Program Documents or any or all of the Transactions hereunder, Buyer shall, acting solely for this purpose as a non-fiduciary agent of Seller, maintain a register at an office located in the United States of America on which it enters the names and addresses of each Participant and each such Participant’s interest in the Program Documents and/or Transactions held by it and the Purchase Price (and Price Differential with respect thereto) of the portion thereof that is the subject of the participation (the “Participant Register”). Any Program Document or any Transaction may be participated in whole or in part only by registration of such participation on the Participant Register. Any participation of the Program Documents or Transactions may be effected only by the registration of such participation on the Participant Register. Buyer shall have no obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in the Program Documents or the Transactions) to any Person except to the extent that such disclosure is necessary to establish that the Program Documents or the Transactions are in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and Buyer and Seller shall treat each Person whose name is recorded in the Participant Register as the owner of

such participation for all purposes of the Program Documents notwithstanding any notice to the contrary. Seller agrees that each Participant shall be entitled to the benefits of Section 29 hereof (subject to the requirements and limitations therein, including the requirements under Section 29(e) (it being understood that the documentation required under Section 29(e) shall be delivered to the participating Buyer)) to the same extent as if it were a Buyer or Assignee and had acquired its interest by assignment pursuant to paragraph (c) of this Section 19; provided that such Participant shall not be entitled to receive any greater payment under Section 29 with respect to any participation, than Buyer would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in an applicable Requirement of Law that occurs after the Participant acquired the applicable participation.

(c) Buyer may at any time assign to one or more banks or other financial institutions (each, an “Assignee”) all or any portion of its rights and obligations under this Agreement, the Transactions and the other Program Documents with five (5) days’ written notice to Seller, and such Assignee shall assume such rights and obligations, pursuant to an assignment and assumption agreement executed by such Assignee and Buyer; provided, however, that, so long as no Event of Default shall have occurred and be continuing, no assignment shall be made to a Disqualified Institution without the prior written consent of Seller.

Upon execution and delivery of such instrument and payment by such Assignee to such Buyer of an amount equal to the purchase price agreed between such Buyer and such Assignee, such Assignee shall be a party to this Agreement and shall have all the rights, protections and obligations of Buyer, and Buyer shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required; provided that no such assignment shall relieve Buyer’s obligation to credit or pay Income to, or apply Income to the Repurchase Obligations of, Seller pursuant to Section 5.

(d) Buyer may at any time assign all or any portion of its rights under this Agreement to a Federal Reserve Bank. No such assignment shall release Buyer from its obligations hereunder.

(e) No Assignee shall be entitled to receive any greater payment under any provision hereof than Buyer would have been entitled to receive with respect to the rights transferred, unless such entitlement to receive a greater payment results from a change in law that occurs after the time of the transfer.

(f) Buyer, on Seller’s behalf, shall maintain a copy of each assignment and a register for the recordation of the names and addresses of the Assignees and the amount of each Assignee’s interest in the Program Documents and/or Transactions held by it and the principal amount or Purchase Price (and stated interest or Price Differential thereon or with respect thereto) of the portion thereof that is the subject of the assignment (the “Register”). Any assignment of the Program Documents or Transactions may be effected only by the registration of such assignment on the Register. The entries in the Register shall be conclusive absent manifest error, and Buyer and Seller shall treat each Person whose name is recorded in the Register as the owner of such assignment for all purposes of the Program Documents notwithstanding any notice to the contrary.

## 20. GOVERNING LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without giving effect to any laws, rules or provisions of the State of New York that would cause the application of the laws, rules or provisions of any jurisdiction other than the State of New York.

## 21. NO WAIVERS, ETC.

No express or implied waiver of any Event of Default by Buyer shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by Buyer shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto and accompanied by a duly executed and delivered reaffirmation by Guarantor of the Guaranty.

## 22. INTENT

(a) The parties intend: (i) that this Agreement and each Transaction hereunder constitutes a “securities contract” as that term is defined in Section 741(7) of the Bankruptcy Code and a “master netting agreement” as defined in Section 101(38A) of the Bankruptcy Code, (ii) that the grant of a security interest set forth in Section 6 to secure the rights of Buyer hereunder also constitutes a “securities contract” as contemplated by Section 741(7)(A)(xi) of the Bankruptcy Code, (iii) for the grant of each security interest/pledge of collateral in the Pledge Agreement to also be a “securities contract” as defined in Section 741(7)(A)(xi) of the Bankruptcy Code, (iv) that the guarantee provided in the Guaranty constitutes “a security agreement or other arrangement or other credit enhancement” that is “related to” this Agreement and Transactions hereunder within the meaning of Section 741(7)(A)(xi) of the Bankruptcy Code and therefore, also to be a “securities contract” as defined in Section 741(7)(A)(xi) of the Bankruptcy Code, (v) Buyer (for so long as Buyer and any successor thereto is a “financial institution”, “financial participant” or other entity listed in section 555 or Section 362(b)(6) of the Bankruptcy Code) will be entitled to the “safe harbor” benefits and protections afforded under the Bankruptcy Code with respect to a “securities contract”, including the rights set forth in Section 14 of this Agreement and Sections 555 and 561 of the Bankruptcy Code to liquidate the Purchased Assets and terminate this Agreement during an Event of Default, (vi) Buyer’s right to accelerate or terminate this Agreement or to liquidate Purchased Assets delivered to it in connection with any Transaction hereunder or to exercise any other remedies pursuant to Section 14 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 561 of the Bankruptcy Code, (vii) Buyer’s right to set-off mutual claims and appropriate and apply any and all deposits of money or property or any other indebtedness at any time held or owing by Buyer to or for the credit of the account of Seller or of any Affiliate against and on account of the obligations and liabilities of Seller pursuant to Section 14(b)(ix) hereof is a contractual right as described in Bankruptcy Code Sections 553 and 561 and (viii) any payment or transfer of property made with respect to this Agreement shall be considered unavoidable

“margin payment” or “settlement payment” as such terms are used in Section 546(e) and defined Sections 741(5) and (8) of the Bankruptcy Code. Each party hereto hereby further agrees that it shall not challenge the characterization of this Agreement, each Transaction hereunder, the pledge set forth in Section 6 herein, the Pledge Agreement and the Guaranty as a “securities contract” and/or “master netting agreement” within the meaning of the Bankruptcy Code.

(b) The parties agree and acknowledge that if a party hereto is an “insured depository institution,” as such term is defined in the Federal Deposit Insurance Act, as amended (“FDIA”), then each Transaction hereunder is a “qualified financial contract,” as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

(c) It is understood that this Agreement constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

(d) In light of the intent set forth above in this Section 22, Seller agrees that, from time to time upon the written request of Buyer, Seller will execute and deliver any supplements, modifications, addendums or other documents as may be necessary or desirable, in Buyer’s sole discretion, in order to cause this Agreement and the Transactions contemplated hereby to qualify for, comply with the provisions of, or otherwise satisfy, maintain or preserve the criteria for safe harbor treatment under the Bankruptcy Code for “securities contracts” and “master netting agreements”; provided, however, that Buyer’s failure to request, or Buyer’s or Seller’s failure to execute, such supplements, modifications, addenda or other documents does not in any way alter or otherwise change the intention of the parties hereto that this Agreement and the Transactions hereunder constitute “securities contracts” and/or a “master netting agreement” as such terms are defined in the Bankruptcy Code.

(e) The parties agree and acknowledge that (i) the security interests granted to Buyer in this Agreement and the Pledge Agreement are each granted to Buyer to induce Buyer to enter into this Agreement and (ii) such security interests and each Guaranty relate to the Transactions as part of an integrated, simultaneously-closing suite of secured financial contracts.

(f) Each party further agrees that this Agreement and each Transaction hereunder is intended to create a mutuality of obligations among the parties, and as such, the Agreement and each Transaction constitutes a contract that (i) is between all of the parties and (ii) places each party in the same right and capacity.

### **23. DISCLOSURE RELATING TO CERTAIN FEDERAL PROTECTIONS**

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission (“SEC”) under Section 15 of the Securities Exchange Act of 1934 (“1934 Act”), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 (“SIPA”) do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

#### **24. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL**

(a) Each party irrevocably and unconditionally (i) submits to the exclusive jurisdiction of any United States federal or New York State court sitting in Manhattan, and any appellate court from any such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under this Agreement or relating in any way to this Agreement or any Transaction under this Agreement and (ii) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile.

(b) To the extent that either party has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under this Agreement or relating in any way to this Agreement or any Transaction under this Agreement.

(c) The parties hereby irrevocably consent to the service of any summons and complaint and any other process by the mailing of copies of such process to them at their respective addresses specified herein. The parties hereby agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 24 shall affect the right of Buyer to serve legal process in any other manner permitted by law or affect the right of Buyer to bring any action or proceeding against Seller or its property in the courts of other jurisdictions.

(d) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER PROGRAM DOCUMENT OR ANY INSTRUMENT OR DOCUMENT DELIVERED HEREUNDER OR THEREUNDER.



## 25. NO RELIANCE

Each of Buyer and Seller hereby acknowledges, represents and warrants to the other that, in connection with the negotiation of, the entering into and the performance under the Program Documents and each Transaction thereunder:

(a) It is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the other party to the Program Documents, other than the representations expressly set forth in the Program Documents;

(b) It has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent that it has deemed necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of any Transaction) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party;

(c) It is a sophisticated and informed Person that has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Program Documents and each Transaction thereunder and is capable of assuming and willing to assume (financially and otherwise) those risks;

(d) It is entering into the Program Documents and each Transaction thereunder for the purposes of managing its borrowings or investments or hedging its underlying assets or liabilities and not for purposes of speculation; and

(e) It is not acting as a fiduciary or financial, investment or commodity trading advisor for the other party and has not given the other party (directly or indirectly through any other Person) any assurance, guaranty or representation whatsoever as to the merits (either legal, regulatory, tax, business, investment, financial accounting or otherwise) of the Program Documents or any Transaction thereunder.

## 26. INDEMNITY

Seller hereby agrees to indemnify Buyer, Buyer's Affiliates and each of its officers, directors, employees and agents ("Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, fees, costs, expenses (including, without limitation, attorneys' fees and disbursements) or disbursements (all of the foregoing, collectively "Indemnified Amounts") that may at any time (including, without limitation, such time as this Agreement shall no longer be in effect and the Transactions shall have been repaid in full) be imposed on or asserted against any Indemnified Party in any way whatsoever arising out of or in connection with, or relating to, this Agreement or any Transactions hereunder or any action taken or omitted to be taken by any Indemnified Party under or in connection with any of the foregoing; provided, that Seller shall not be liable for Indemnified Amounts resulting from the gross negligence, willful misconduct or bad faith of any Indemnified Party. Without limiting the generality of the foregoing, Seller agrees to hold Buyer harmless from and indemnify Buyer against all Indemnified Amounts with respect to all Purchased Assets relating to or arising out of any violation or alleged violation of any Environmental Law unless resulting solely from Buyer's gross negligence, willful misconduct,

bad faith or fraud. In any suit, proceeding or action brought by Buyer in connection with any Purchased Asset for any sum owing thereunder, or to enforce any provisions of any Purchased Asset, Seller will save, indemnify and hold Buyer harmless from and against all expenses (including, without limitation, attorneys' fees), damage suffered by any Indemnified Party by reason of any defense, set-off, counterclaim, recoupment or reduction or liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from Seller. Seller agrees to reimburse Buyer as and when billed by Buyer for all of Buyer's costs and expenses incurred in connection with the enforcement or the preservation of Buyer's rights under this Agreement or any Transaction contemplated hereby, including, without limitation, the fees and disbursements of its counsel. This Section 26 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

## **27. DUE DILIGENCE**

Seller acknowledges that, at reasonable times and upon reasonable notice, Buyer has the right to perform continuing due diligence reviews with respect to the Purchased Assets, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, or otherwise, and Seller agrees that upon reasonable prior notice to Seller, Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect and make copies and extracts of the Purchased Asset Files, Servicing Records and any and all documents, records, agreements, instruments or information relating to such Purchased Assets in the possession or under the control of any Originator, Seller, any Servicer or subservicer and/or Custodian. Seller also shall make available to Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Purchased Asset Files and the Purchased Assets. Without limiting the generality of the foregoing, Seller acknowledges that Buyer may enter into Transactions with Seller based solely upon the information provided by Seller to Buyer and the representations, warranties and covenants contained herein, and that Buyer, at its option, has the right at any time to conduct a partial or complete due diligence review on some or all Purchased Assets. Buyer may underwrite such Purchased Assets itself or engage a third-party underwriter to perform such underwriting. Seller agrees to cooperate with Buyer and any third-party underwriter in connection with such underwriting, including, but not limited to, providing Buyer and any third-party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Purchased Assets in the possession, or under the control, of Seller or any Originator. Seller shall reimburse Buyer for all due diligence costs relating to Buyer's review of any Purchased Asset (including, without limitation, legal costs, custodial fees and third-party due diligence costs and fees). Buyer in good faith expects that (except with respect to Purchased Assets that are secured by multiple Mortgaged Properties or contain features that require more due diligence than customary, including, without limitation, unique property and/or funding characteristics, including, but not limited to, table fundings, mezzanine debt/preferred equity/co-lending structures, Ground Leases, and condominiums) (a) initial loan-level due diligence costs with respect to any Purchased Asset (other than attorneys' fees and expenses related to the initial review of the related Purchased Asset Documents) will not be greater than \$5,000 and (b) initial loan-level due diligence costs comprised of attorneys' fees and expenses related to the initial review of the Purchased Asset Documents with respect to any Purchased Asset will be in an amount equal to approximately

\$7,500; provided that Seller is at all times obligated to reimburse Buyer for all such costs notwithstanding whether such costs exceed \$5,000 or \$7,500, as applicable. Seller shall pay for all of Buyer's costs and expenses incurred in connection with on-site diligence visits; provided that such liability shall be limited to one (1) visit per year unless an Event of Default or Funding Termination Event has occurred. Unless an Event of Default has occurred and is continuing, (i) Seller shall be obligated to pay the costs for Appraisals required under Section 12(h)(iv)(A) and (ii) with respect to Appraisals required under Section 12(h)(iv)(B), Seller shall be obligated to pay costs for one (1) Appraisal per Purchased Asset per year if such Appraisal reflects an "as-is" appraised value that is less than the "as-is" appraised value reflected on the previous Appraisal; if such Appraisal reflects an "as-is" appraised value that is equal to or greater than the "as-is" appraised value reflected on the previous Appraisal, Buyer shall be obligated to pay for the costs of such Appraisal. Seller agrees to cooperate with Buyer and any Independent Appraiser in connection with obtaining Appraisals. Seller agrees to pay all of Buyer's costs and expenses incurred in connection with any Future Funding request.

## **28. SERVICING**

(a) Seller and Buyer agree that all Servicing Rights with respect to the Purchased Assets are being transferred hereunder to Buyer on the applicable Purchase Date and such Servicing Rights shall be transferred by Buyer to Seller upon Seller's payment of the Repurchase Price for the Purchased Assets, and any servicing provisions of this Agreement or any other Program Document constitute (i) "related terms" under this Agreement within the meaning of Section 101(47)(A)(i) of the Bankruptcy Code and/or (ii) a security agreement or other arrangement or other credit enhancement related to the Program Documents. Notwithstanding the transfer of Servicing Rights to Buyer, Buyer hereby agrees that each Servicer may continue to service the Purchased Assets (excluding the Servicing Rights) for the benefit of Buyer and, if Buyer shall exercise its rights to pledge or hypothecate the Purchased Assets prior to the Repurchase Date pursuant to Section 8 hereof, Buyer's assigns; provided, however, that such Servicer shall have entered into a Servicing Agreement or Servicing Acknowledgement Agreement satisfactory to Buyer acknowledging Buyer's interest in the related Purchased Assets and its rights to sell such Purchased Assets on a servicing-released basis and to terminate the term of such Servicer with respect to any Purchased Assets sold by Buyer upon the occurrence and during the continuance of an Event of Default. Seller shall cause the Purchased Assets to be serviced in accordance with Accepted Servicing Practices.

(b) Seller agrees that Buyer is the owner of all servicing records, including but not limited to the Servicing Agreement and any and all other servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of Purchased Assets (collectively, the "Servicing Records") so long as the Purchased Assets are subject to this Agreement. Seller covenants to safeguard such Servicing Records (if any are in Seller's possession) and to deliver them promptly to Buyer or its designee (including Custodian) at Buyer's request.

(c) Upon the occurrence and during the continuance of an Event of Default, Buyer may, in its sole discretion, (i) sell its rights to the Purchased Assets on a servicing-released basis and/or (ii) terminate any Servicer or any sub-servicer of the Purchased Assets with or without cause, in each case, without payment of any termination fee. Seller shall cause each Servicer to cooperate with Buyer in effecting such termination and transferring all authority to service such Purchased Asset to the successor servicer, including requiring such Servicer to (i) promptly transfer all data in its possession relating to the Purchased Assets to the successor servicer in such electronic format as the successor servicer may reasonably request, (ii) promptly transfer to the successor servicer, Buyer or Buyer's designee, the Purchased Asset File and all other files, records, correspondence and documents in its possession relating to the Purchased Assets and (iii) use commercially reasonable efforts to cooperate and coordinate with the successor servicer and/or Buyer to comply with any legal or regulatory requirement associated with the transfer of the servicing of the applicable Purchased Assets. Seller agrees that if Seller or any Servicer fails to cooperate with Buyer or any successor servicer in effecting the termination of such Servicer as servicer of any Purchased Asset or the transfer of all authority to service such Purchased Asset to such successor servicer in accordance with the terms hereof and the Servicing Agreement, Buyer will be irreparably harmed and entitled to injunctive relief.

(d) Seller shall not employ any Servicer rated below "above average" by S&P, unless such Servicer is otherwise approved by Buyer, in its sole and absolute discretion, to service the Purchased Assets (excluding the Servicing Rights). Seller shall irrevocably assign to Buyer all of its rights, title and interest under the Servicing Agreement as a condition of allowing the Purchased Assets (excluding the Servicing Rights) to be serviced by a Servicer thereunder and shall cause such Servicer engaged by Seller to execute a Servicing Agreement or Servicing Acknowledgement Agreement with Buyer acknowledging Buyer's security interest, agreeing that it shall deposit all Income (other than Servicer Income) and any other sums required to be remitted to the holder of the Purchased Assets under the related Purchased Asset Documents to Account Bank for deposit in the Repo Collection Account as set forth in Section 5 hereof or as otherwise directed in a written notice signed by Buyer for so long as such Purchased Asset is subject to this Agreement, and acknowledging Buyer's rights to terminate servicing as otherwise set forth in this Section 28.

(e) If any Servicer is an Affiliate of Seller, Guarantor, Pledgor or any Affiliated Originator, the payment of servicing fees shall be subordinate to payment of amounts outstanding under any Transaction and this Agreement.

## **29. TAXES**

(a) Any and all payments by or on account of any obligation of the Seller Parties under any Program Document shall be made without deduction or withholding for any Tax, except as required by an applicable Requirement of Law. If any applicable Requirement of Law requires the deduction or withholding of any Tax from any such payment, then Seller shall make (or cause to be made) such deduction or withholding and shall timely pay (or cause to be timely paid) the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Requirement of Law and, if such Tax is an Indemnified Tax, then the sum payable shall be increased by Seller as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 29) the Buyer or Assignee, as applicable, receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Seller shall timely pay to the relevant Governmental Authority in accordance with any applicable Requirement of Law, or at the option of the Buyer or Assignee, as applicable, timely reimburse it for the payment of, any Other Taxes.

(c) Seller shall indemnify Buyer and each Assignee, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 29) paid by such Buyer or Assignee or required to be withheld or deducted from a payment to such Buyer or Assignee, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Seller by Buyer or Assignee, as applicable, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by Seller to a Governmental Authority pursuant to this Section 29, Seller shall deliver to Buyer or Assignee, as applicable, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Buyer or Assignee.

(e) (i) If Buyer or an Assignee is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Program Document, such Buyer or Assignee shall deliver to Seller, at the time or times reasonably requested by Seller, such properly completed and executed documentation reasonably requested by Seller as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, Buyer and each Assignee shall deliver such other documentation prescribed by applicable law or reasonably requested by Seller as will enable Seller to determine whether or not such Buyer or Assignee is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 29(e)(ii)(A), Section 29(e)(ii)(B) and Section 29(e)(ii)(D) below) shall not be required if in Buyer's or Assignee's reasonable judgment such completion, execution or submission would subject such Buyer or Assignee to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Buyer or Assignee.

(ii) Without limiting the generality of the foregoing,

- (A) if Buyer or Assignee is a U.S. Buyer, it shall deliver to Seller on or prior to the date on which such Buyer or Assignee becomes a Party under this Agreement (and from time to time thereafter upon the reasonable request of Seller), executed copies of IRS Form W-9 certifying that such Buyer or Assignee is exempt from U.S. federal backup withholding tax;
- (B) if Buyer or Assignee is a Foreign Buyer, it shall, to the extent it is legally entitled to do so, deliver to Seller (in such number of copies as shall be requested by Seller) on or prior to the date on which such Buyer or Assignee becomes a Party under this Agreement (and from time to time thereafter upon the reasonable request of Seller), whichever of the following is applicable:

- (I) in the case of a Foreign Buyer claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Program Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Program Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;
  - (II) executed copies of IRS Form W-8ECI;
  - (III) in the case of a Foreign Buyer claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Buyer is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Seller within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” related to Seller as described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or
  - (IV) to the extent a Foreign Buyer is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Buyer is a partnership and one or more direct or indirect partners of such Foreign Buyer are claiming the portfolio interest exemption, such Foreign Buyer may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;
- (C) if Buyer or Assignee is a Foreign Buyer, it shall, to the extent it is legally entitled to do so, deliver to Seller (in such number of copies as shall be requested by Seller) on or prior to the date on which such Buyer or Assignee becomes a Party under this Agreement (and from time to time thereafter upon the reasonable request of

Seller), executed copies of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit Seller to determine the withholding or deduction required to be made; and

(D) if a payment made to Buyer or Assignee under any Program Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Buyer or Assignee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), then such Buyer or Assignee shall deliver to Seller at the time or times prescribed by law and at such time or times reasonably requested by Seller such documentation prescribed by Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Seller as may be necessary for Seller to comply with its obligations under FATCA and to determine that such Buyer or Assignee has complied with Buyer's or Assignee's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Buyer and each Assignee agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Seller in writing of its legal inability to do so.

(f) If any Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 29 (including by the payment of additional amounts pursuant to this Section 29), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 29 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 29(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 29(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 29(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 29(f) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) **Survival.** Each party's obligations under this Section 29 shall survive any assignment of rights by, or the replacement of, Buyer or an Assignee, and the repayment, satisfaction or discharge of all obligations under any Program Document.

### **30. U.S. TAX TREATMENT**

Notwithstanding anything to the contrary in the Program Documents, it is the intention of the parties hereto that, for U.S. federal, state and local income and franchise tax purposes, (a) the Transactions constitute and will be treated as indebtedness that is secured by the Purchased Assets which does not give rise to or result in treatment of all or any portion of Seller or any Transaction as a taxable mortgage pool (as defined in Section 7701(i) of the Code) and (b) Seller will be treated as the beneficial owner of the Purchased Assets in the absence of a default that has occurred and is continuing. Seller and Buyer (and each Assignee) agree to treat and report the Transactions and Seller as described in the preceding sentence on and in any and all filings with any U.S. federal, state or local taxing authority, unless prohibited by applicable law as evidenced by a definitive change in applicable statutes, regulations, binding administrative rulings by the IRS or judicial authority.

### **31. ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF AFFECTED FINANCIAL INSTITUTIONS**

Notwithstanding anything to the contrary in this Agreement or in any of the other Program Documents, Seller acknowledges that any liability of any EEA Financial Institution or any UK Financial Institution, including without limitation Buyer or any of its successors or assigns, arising under this Agreement or under any of the other Program Documents, except to the extent such liability is excluded under the Bail-In Legislation from the scope of any Bail-In Action, may be subject to the Write-Down and Conversion Powers of an applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an applicable Resolution Authority to any such liabilities arising under this Agreement or under any of the other Program Documents which may be payable to it by any party hereto that is an EEA Financial Institution or a UK Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

- (i) a reduction in full or in part or cancellation of any such liability including without limitation a reduction in any accrued or unpaid interest in respect of such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution or such UK Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or under any of the other Program Document; or



- (iii) the variation of the terms of this Agreement or under any of the other Program Documents to give effect to the exercise of the Write-Down and Conversion Powers of any applicable Resolution Authority.

### **32. RECOGNITION OF THE U.S. SPECIAL RESOLUTION REGIMES**

(a) In the event that Buyer becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from Buyer of this Agreement and/or the other Program Documents, and any interest and obligation in or under this Agreement and/or the other Program Documents, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement and/or the other Program Documents, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that Buyer or a BHC Act Affiliate of Buyer becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement and/or the other Program Documents that may be exercised against Buyer are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement and/or the other Program Documents were governed by the laws of the United States or a state of the United States.

### **33. MISCELLANEOUS**

(a) All rights, remedies and powers of Buyer hereunder and in connection herewith are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers of Buyer whether under law, equity or agreement. In addition to the rights and remedies granted to it in this Agreement, to the extent applicable, Buyer shall have all rights and remedies of a secured party under the UCC.

(b) The Program Documents may be executed in counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to any Program Document in Portable Document Format (PDF) or by facsimile shall be effective as delivery of a manually executed original counterpart of such Program Document. The parties agree that this Agreement, any addendum or amendment hereto or any other document necessary for the consummation of the transactions contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the E-Sign, the Uniform Electronic Transactions Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any secure third-party electronic signature capture service providers with appropriate document access tracking, electronic signature tracking and document retention as may be approved by Buyer in its sole discretion.

(c) The headings in the Program Documents are for convenience of reference only and shall not affect the interpretation or construction of the Program Documents.

(d) Without limiting the rights and remedies of Buyer under the Program Documents, Seller shall pay Buyer's reasonable actual out-of-pocket costs and expenses, including reasonable fees and expenses of accountants, attorneys and advisors, incurred in connection with the preparation, negotiation, execution and consummation of and any amendment, supplement or modification to, the Program Documents and the Transactions thereunder. Seller agrees to pay Buyer on demand all costs and expenses (including reasonable expenses for legal services of every kind) of any subsequent enforcement of any of the provisions hereof, or of the performance by Buyer of any obligations of Seller in respect of the Purchased Assets, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of the Collateral and for the custody, care or preservation of the Collateral (including insurance costs) and defending or asserting rights and claims of Buyer in respect thereof, by litigation or otherwise. In addition, Seller agrees to pay Buyer on demand all reasonable costs and expenses (including reasonable expenses for legal services) incurred in connection with the maintenance of the Repo Collection Account and registering the Collateral in the name of Buyer or its nominee. All such expenses shall be recourse obligations of Seller to Buyer under this Agreement.

(e) Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(f) Seller hereby covenants to file all UCC financing statements required by Buyer in order to perfect its security interest created hereby in such rights and obligations granted above, it being agreed that Seller shall pay any and all fees required to file such financing statements.

(g) This Agreement, the Fee Letter and each Confirmation contains a final and complete integration of all prior expressions by the parties with respect to the subject matter hereof and thereof and shall constitute the entire agreement among the parties with respect to such subject matter, superseding all prior oral or written understandings.

(h) The parties understand that this Agreement is a legally binding agreement that may affect such party's rights. Each party represents to the other that it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Agreement and that it is satisfied with its legal counsel and the advice received from it.

(i) Should any provision of this Agreement require judicial interpretation, it is agreed that a court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any Person by reason of the rule of construction that a document is to be construed more strictly against the Person who itself or through its agent prepared the same, it being agreed that all parties have participated in the preparation of this Agreement.

(j) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented, modified and/or restated from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Program Document) and shall include all exhibits, schedules and other attachments thereto, (ii) any reference herein to any Person shall be construed to include such Person’s heirs, personal representatives, successors, trustees, receivers, and permitted assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Program Document, shall be construed to refer to such Program Document in its entirety and not to any particular provision thereof, (iv) all references in a Program Document to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, the Program Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vii) unless otherwise indicated, all references to money (including the symbol “\$”) are to lawful currency of the United States.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first written above.

**SELLER:**

FS CREIT FINANCE NTX-1 LLC, a Delaware  
limited liability company

By: /s/ Stephen S. Sypherd  
Name: Stephen Sypherd  
Title: President

S-1

*Master Repurchase Agreement*

**BUYER:**

**NATIXIS, NEW YORK BRANCH**

By: /s/ Jonathan Rechner

Name: Jonathan Rechner

Title: Executive Director

By: /s/ Michael Baincolin

Name: Michael Baincolin

Title: Director

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**ANNEXES AND EXHIBITS**

ANNEX I	Names and Addresses for Communications between Parties
EXHIBIT A	Form of Transaction Request
EXHIBIT B	Form of Confirmation
EXHIBIT C	Authorized Representatives of Seller
EXHIBIT D	Underwriting/Due Diligence Checklist
EXHIBIT E	Form of Compliance Certificate
EXHIBIT F	Form of Power of Attorney
EXHIBIT G-1	Representations and Warranties Regarding Whole Loans and A-Notes
EXHIBIT G-2	Representations and Warranties Regarding Eligible Participation Interests
EXHIBIT H	Organizational Chart
EXHIBIT I	Form of Redirection Letter
EXHIBIT J	Disqualified Institutions
EXHIBIT K	Form of Purchase Price Margin Excess Request

ANNEX I

Names and Addresses for Communications Between Parties

Buyer:

Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Real Estate Administration  
Telephone: (212) 891-5704  
Email: [USCIBSnDAssetManagementTeam@natixis.com](mailto:USCIBSnDAssetManagementTeam@natixis.com)

With a copy to:

Mayer Brown LLP  
214 North Tryon Street, Suite 3800  
Charlotte, North Carolina 28202  
Attention: Eric M. Reilly  
Telephone: (704) 444-3581  
Email: [ereilly@mayerbrown.com](mailto:ereilly@mayerbrown.com)

Seller:

FS CREIT Finance NTX-1 LLC  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone No: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com); [FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

With a copy to:

FS Credit Real Estate Income Trust, Inc.  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com)  
[FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

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With a copy to:

Morrison & Foerster LLP  
250 West 55th Street  
New York, New York 10019  
Attention: Jay Gavigan  
Telephone: (212) 336-4188  
Email: [jgavigan@mof.com](mailto:jgavigan@mof.com)

Pledgor:

FS CREIT Finance Holdings LLC  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone No: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com); [FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

Annex I-2



## TRANSACTION REQUEST

Ladies and Gentlemen:

Pursuant to Section 3(a) of that certain Master Repurchase Agreement and Securities Contract, dated as of November 10, 2022 (as the same may have been and may hereafter be amended, restated, supplemented or otherwise modified, the "Agreement"), by and between Natixis, New York Branch ("Buyer") and FS CREIT Finance NTX-1 LLC, a Delaware limited liability company ("Seller"), Seller hereby requests that Buyer enter into a Transaction with respect to the Eligible Assets set forth on Schedule 1 attached hereto, upon the proposed terms set forth below. Capitalized terms used herein without definition have the meanings given in the Agreement.

Proposed Purchase Date: [\_\_\_\_\_]

Proposed Eligible Assets: As identified on attached Schedule 1

Proposed Waived Eligibility Criteria Asset(s): [\_\_\_\_\_]

Principal Amount of Proposed Eligible Assets As identified on attached Schedule 1

Proposed Purchase Price Percentage: [\_\_\_\_\_]%

Proposed Purchase Price: [\_\_\_\_\_]

Future Funding Eligible Asset: [Y/N]  
[\_\_\_\_\_]

Amount of Future Funding Obligations: [\_\_\_\_\_]

Not included in a securitization executed by or on behalf of Guarantor: [Y/N]

Applicable Spread during the Funding Period: [\_\_\_\_\_]%

Applicable Spread after the expiration of the Funding Period<sup>1</sup>: [\_\_\_\_\_]%

SOFR Floor: [\_\_\_\_\_]%

<sup>1</sup> The Applicable Spread for each Purchased Asset will increase following the expiration of the Funding Period by (i) 0.25% with respect to any Purchased Asset with the related Mortgaged Property (or Mortgaged Properties) secured by multifamily properties, and (ii) 0.50% with respect to any other Purchased Asset.

Pricing Rate: As defined in the Agreement; provided that in no event shall the Pricing Rate be less than [ ]<sup>2</sup>.

Seller's Account:

REMIC Eligible Asset: [Y/N]

Name and address for communications:

Buyer:  
Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Real Estate Administration  
Telephone: (212) 891-5704  
Email: [USCIBSnDAssetManagementTeam@natixis.com](mailto:USCIBSnDAssetManagementTeam@natixis.com)

With a copy to:

Mayer Brown LLP  
214 North Tryon Street, Suite 3800  
Charlotte, North Carolina 28202  
Attention: Eric M. Reilly  
Telephone: (704) 444-3581  
Email: [ereilly@mayerbrown.com](mailto:ereilly@mayerbrown.com)

Seller:

FS CREIT Finance NTX-1 LLC  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone No: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com);  
[FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

With a copy to:

FS Credit Real Estate Income Trust, Inc.  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com)  
[FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

---

<sup>2</sup> Sum of the Applicable Spread and the SOFR Floor.



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**SELLER:**

**FS CREIT FINANCE NTX-1 LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A-4

**Schedule 1 to Transaction Request**

Eligible Assets:

Principal Amount of Eligible Assets: \$[\_\_\_\_\_]

Identified Eligibility Criteria to be Waived:

\_\_\_\_\_  
\_\_\_\_\_

Identified Concentration Exceptions:

\_\_\_\_\_  
\_\_\_\_\_

Exhibit A-5

## CONFIRMATION

Ladies and Gentlemen:

Natixis, New York Branch (“Buyer”), is pleased to deliver our written **CONFIRMATION** of our agreement to enter into the Transaction pursuant to which Natixis, New York Branch shall purchase from you the Purchased Assets identified on Schedule 1 attached hereto, upon satisfaction of all Transaction Conditions Precedent and pursuant to the terms of that certain Master Repurchase Agreement and Securities Contract, dated as of November 10, 2022 (as the same may have been and may hereafter be amended, restated, supplemented or otherwise modified, the “Agreement”), by and between Buyer and FS CREIT Finance NTX-1 LLC, a Delaware limited liability company (“Seller”). Capitalized terms used herein without definition have the meanings given in the Agreement.

Purchase Date:	[_____]
Purchased Assets:	As identified on attached <u>Schedule 1</u>
Waived Eligibility Criteria Asset(s):	[_____]
Principal Amount of Purchased Assets	As identified on attached <u>Schedule 1</u>
Future Funding Eligible Asset:	[Y/N]
Buyer Future Funding Eligible Asset	[Y/N]
Amount of Future Funding Obligations:	[_____]
Repurchase Date:	[_____]
Purchase Price Percentage:	[_____]%, as calculated pursuant to attached Schedule 3
Purchase Price:	[_____]
Recourse Percentage:	[_____]%
LTV Threshold:	[_____]%
Purchased Asset Appraised Value:	As identified on attached <u>Schedule 2</u>
Debt Yield:	As identified on attached <u>Schedule 2</u>
LTV:	As identified on attached <u>Schedule 2</u>
Property Value	As identified on attached <u>Schedule 2</u>
UPB Applicable Pricing Percentage:	As identified on attached <u>Schedule 2</u>
Property Value Applicable Pricing Percentage:	As identified on attached <u>Schedule 2</u>
Applicable Spread during the Funding Period:	[_____]%

Exhibit B-1

Applicable Spread after the expiration of the Funding Period<sup>3</sup>: [\_\_\_\_\_]%

SOFR Floor: [\_\_\_\_\_]%

Pricing Rate: As defined in the Agreement; provided that in no event shall the Pricing Rate be less than [\_\_\_\_\_]4.

REMIC Eligible Asset: [Y/N]

Seller's Account: [\_\_\_\_\_]

Name and address for communications: Buyer:

Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Real Estate Administration  
Telephone: (212) 891-5704  
Email: [USCIBSnDAssetManagementTeam@natixis.com](mailto:USCIBSnDAssetManagementTeam@natixis.com)

With a copy to:

Mayer Brown LLP  
214 North Tryon Street, Suite 3800  
Charlotte, North Carolina 28202  
Attention: Eric M. Reilly  
Telephone: (704) 444-3581  
Email: [ereilly@mayerbrown.com](mailto:ereilly@mayerbrown.com)

Seller:

FS CREIT Finance NTX-1 LLC  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone No: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com);  
[FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

<sup>3</sup> The Applicable Spread for each Purchased Asset will increase following the expiration of the Funding Period by (i) 0.25% with respect to any Purchased Asset with the related Mortgaged Property (or Mortgaged Properties) secured by multifamily properties, and (ii) 0.50% with respect to any other Purchased Asset.

<sup>4</sup> Sum of the Applicable Spread and the SOFR Floor.

---

With a copy to:

FS Credit Real Estate Income Trust, Inc.  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone: (215) 495-1150  
Email: [credit.notices@fsinvestments.com](mailto:credit.notices@fsinvestments.com)  
[FSCREIT\\_TEAM@fsinvestments.com](mailto:FSCREIT_TEAM@fsinvestments.com)

Exhibit B-3



**NATIXIS, NEW YORK BRANCH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED AND ACKNOWLEDGED:

**SELLER:**

**FS CREIT FINANCE NTX-1 LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B-4

Schedule 1 to Confirmation

Purchased Assets: [\_\_\_\_\_]

Principal Amount: \$[\_\_\_\_\_]

Waived Eligibility Criteria:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Concentration Exceptions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Schedule 2 to Confirmation**

Purchased Asset Acquisition Cost: [\_\_\_\_\_]

Purchased Asset Appraised Value: [\_\_\_\_\_]

Purchased Asset Principal Balance: [\_\_\_\_\_]

Debt Yield: [\_\_\_\_\_]

LTV: [\_\_\_\_\_]

Property Value: [\_\_\_\_\_]

UPB Applicable Pricing Percentage: [\_\_\_\_\_]

Property Value Applicable Pricing Percentage: [\_\_\_\_\_]

Not included in a securitization executed by or on behalf of Guarantor or any of its Affiliates: [Y/N]

Future Funding Financing Capacity: [Y/N]

Exhibit B-6

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**Schedule 3 to Confirmation**

Purchase Date Purchase Price Formula

An amount not to exceed the lesser of (1) the UPB Applicable Pricing Percentage of the outstanding principal balance of the related Whole Loan, A-Note or Eligible Participation Interest, as applicable, and (2) the Property Value Applicable Pricing Percentage of the allocated portion of the Property Value of the Mortgaged Property securing such Purchased Asset (or in the case of an A-Note or Eligible Participation Interest, an allocated portion of the Property Value with respect to such A-Note or Eligible Participation Interest, as applicable), as applicable.

Exhibit B-7

AUTHORIZED REPRESENTATIVES OF SELLER

Name  
Christopher Condelles  
Alexander Neff  
Stephen Sypherd

Specimen Signature  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit C-1

UNDERWRITING/DUE DILIGENCE CHECKLIST

Underwriting Checklist

Deal Name: \_\_\_\_\_  
 City / State: \_\_\_\_\_  
 Transaction Number: \_\_\_\_\_  
 Date: \_\_\_\_\_

	Item Status	Date Received	Comments/Questions
1. General Information			
a) Working Group Contact List			
2. Borrower Credit Forms			
a) Credit Authorization Form (Exhibit A)			
b) Compliance Questionnaire (Exhibit B)			
c) Credit & Litigation Disclosure Form (Exhibit C)			
d) Banking References (Exhibit D)			
e) Contingent Liability Form (Exhibit E)			
f) Certified Sources & Uses (Exhibit F)			
g) Executed Schedule of Historical Occupancy (Exhibit G)			
h) Real Estate Owned Schedule (Exhibit H)			
i) Management Company Profile (Exhibit I)			
3. Guarantor Information			
a) Financial Statements (certified)			
b) Tax Returns (Last 3 years)			
c) Resume			
d) Borrowing Structure/Organization Chart			
4. Historical Operating Statements (certified)			
a) Last 3 Years			
b) Trailing 12 Months (monthly)			
c) Current Operating Budget (1-year for Fixed, 3-years for Floating)			
d) Current Rent Roll			
e) Schedule of 36-month Historical Occupancy			
5. Tenant Information			
a) Copy of all Tenant Leases, Subleases & Amendments			
b) Standard Form of Lease			
c) Co-Tenancy Schedule (if available)			
d) All Reported Historical & Current Sales Reports			
e) Schedule of Tenant Expense Reimbursements (last 2 years)			
f) Schedule of Security Deposits for All Tenants			
g) Tenant Business Descriptions (if available)			
h) Tenant Financials (if available)			
i) Tenant Contacts for Top 5 tenants by Square Footage			
6. Property Site Plans, Maps, & Photos			
a) Property Site Plan & Floor Plans			
b) Photographs & Maps			
c) Property Marketing Material			

- |   |       |       |       |
|---|-------|-------|-------|
| 7. Management Company                                   | _____ | _____ | _____ |
| a) Copy of Management Agreement                         | _____ | _____ | _____ |
| b) Copy of Leasing Agreement (if applicable)            | _____ | _____ | _____ |
| c) Company Description                                  | _____ | _____ | _____ |
| d) Resume of Key Management Personnel                   | _____ | _____ | _____ |
| e) Leasing Pipeline Report (if applicable)              | _____ | _____ | _____ |
| 8. Property Information                                 |       |       |       |
| a) Real Estate Tax Bills (Current & Last 2 Years)       | _____ | _____ | _____ |
| b) Insurance Premium Invoices                           | _____ | _____ | _____ |
| c) Schedule of Capital Expenditures (Historical/Future) | _____ | _____ | _____ |
| d) Copy of Service Contracts                            | _____ | _____ | _____ |
| e) Tenant Delinquency & Aged Receivables                | _____ | _____ | _____ |
| f) Last 3 Months of Bank Deposits                       | _____ | _____ | _____ |
| g) Schedule of Last 3 Years and Outstanding TI/LC costs | _____ | _____ | _____ |
| h) Schedule of Last 3 Years and Outstanding Free Rent   | _____ | _____ | _____ |
| i) Schedule of On-Site Employees (including salaries)   | _____ | _____ | _____ |
| j) Copy of Ground Leases & Abstracts (if applicable)    | _____ | _____ | _____ |
| k) Copy of Condominium Documents (if applicable)        | _____ | _____ | _____ |
| l) Executed Purchase Contract (if applicable)           | _____ | _____ | _____ |
| m) Borrower Business Plan Going Forward                 | _____ | _____ | _____ |
| 9. Pre-Existing Third Party Reports                     |       |       |       |
| a) Existing Appraisal Report (if available)             | _____ | _____ | _____ |
| b) Existing Engineering Report (if available)           | _____ | _____ | _____ |
| c) Existing Environmental Report (if available)         | _____ | _____ | _____ |
| d) Existing O&M Plans (if available)                    | _____ | _____ | _____ |
| e) Existing Seismic Report (if available)               | _____ | _____ | _____ |
| 10. Third Party Reports                                 |       |       |       |
| a) Appraisal Report (if available)                      | _____ | _____ | _____ |
| b) Engineering Report (if available)                    | _____ | _____ | _____ |
| c) Environmental Report (if available)                  | _____ | _____ | _____ |
| d) O&M Plans (if available)                             | _____ | _____ | _____ |
| e) Seismic Report (if available)                        | _____ | _____ | _____ |

Underwriting Checklist

Deal Name: \_\_\_\_\_  
 City / State: \_\_\_\_\_  
 Transaction Number: \_\_\_\_\_  
 Date: \_\_\_\_\_

	Item Status	Date Received	Comments/Questions
1. General Information			
a) Working Group Contact List			
2. Borrower Credit Forms			
a) Credit Authorization Form (Exhibit A)			
b) Compliance Questionnaire (Exhibit B)			
c) Credit & Litigation Disclosure Form (Exhibit C)			
d) Banking References (Exhibit D)			
e) Contingent Liability Form (Exhibit E)			
f) Certified Sources & Uses (Exhibit F)			
g) Executed Schedule of Historical Occupancy (Exhibit G)			
h) Real Estate Owned Schedule (Exhibit H)			
i) Management Company Profile (Exhibit I)			
3. Guarantor Information			
a) Financial Statements (certified)			
b) Tax Returns (Last 3 years)			
c) Resume			
d) Borrowing Structure/Organization Chart			
4. Historical Operating Statements (certified) (Include ADR & Occupancy)			
a) Last 3 Years (10 year if available)			
b) Trailing 24 Months (monthly)			
c) Current Operating Budget			
d) Current Rent Roll			
e) Schedule of 36-month Historical Occupancy			
5. Tenant Information			
a) Copy of all Tenant Leases, Subleases & Amendments			IF PROPERTY INCLUDES COMMERCIAL/RETAIL TENANTS
b) Standard Form of Lease			
c) Co-Tenancy Schedule (if available)	NAP		
d) All Reported Historical & Current Sales Reports	NAP		
e) Schedule of Tenant Expense Reimbursements (last 2 years)	NAP		
f) Schedule of Security Deposits for All Tenants	NAP		
g) Tenant Business Descriptions (if available)	NAP		
h) Tenant Financials (if available)	NAP		
6. Property Site Plans, Maps, & Photos			
a) Property Site Plan & Floor Plans			
b) Photographs & Maps			
c) Property Marketing Material			
7. Management Company			
a) Copy of Management Agreement			
b) Copy of Leasing Agreement (if applicable)			
c) Company Description			
d) Resume of Key Management Personnel			
e) Leasing Pipeline Report (if applicable)			



8. Property Information			
a) Real Estate Tax Bills (Current & Last 2 Years)			
b) Insurance Premium Invoices			
c) Schedule of Capital Expenditures (Historical/Future)			
d) Copy of Service Contracts			
e) Tenant Delinquency & Aged Receivables			
f) Last 3 Months of Bank Deposits			
g) Schedule of Last 3 Years and Outstanding TI/LC costs	NAP		
h) Schedule of Last 3 Years and Outstanding Free Rent	NAP		
i) Schedule of On-Site Employees (including salaries)			
j) Copy of Ground Leases & Abstracts (if applicable)			
k) Copy of Condominium Documents (if applicable)			
l) Executed Purchase Contract (if applicable)			
m) Borrower Business Plan Going Forward			
9. Pre-Existing Third Party Reports			
a) Existing Appraisal Report (if available)			
b) Existing Engineering Report (if available)			
c) Existing Environmental Report (if available)			
d) Existing O&M Plans (if available)			
e) Existing Seismic Report (if available)			
10. Hotel Information			
a) Star Reports (Current and last 5 years)			
b) Property Evaluation Summary (QA Report)			
c) Franchise/Membership Agreement			
d) Property Improvement Plan (PIP)			
e) Top 10 Corporate Accounts			
f) Forward Bookings			
11. Third Party Reports			
a) Appraisal Report (if available)			
b) Engineering Report (if available)			
c) Environmental Report (if available)			
d) O&M Plans (if available)			
e) Seismic Report (if available)			

FORM OF COMPLIANCE CERTIFICATE

Natixis, New York Branch  
1251 Avenue of the Americas  
New York, New York 10020  
Attention: Real Estate Administration

Re: Master Repurchase Agreement and Securities Contract (as the same may have been and may hereafter be amended, restated, supplemented or otherwise modified, the "Agreement"), dated as of November 10, 2022, by and between FS CREIT Finance NTX-1 LLC ("Seller") and Natixis, New York Branch ("Buyer"). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Agreement.

Ladies and Gentlemen:

In accordance with the Agreement, the undersigned hereby certifies to Buyer as follows as of the date hereof:

- (a) The undersigned is a [                    TITLE                    ] of [ NAME OF COMPANY ].
- (b) The information and calculations furnished in the attached Schedule 1 are true, correct and complete in all material respects as of the last day of the calendar month immediately preceding the date of this Compliance Certificate.
- (c) As of the date hereof and at all times during the calendar month immediately preceding the date of this Compliance Certificate, the Concentration Limit Test was satisfied.
- (d) Guarantor is in full compliance with the financial covenants set forth in Section 9 of the Guaranty as evidenced by the calculations attached hereto as Schedule 2, which calculations and schedule are true, correct and complete in all material respects.
- (e) The financial statements, updates, reports and other materials referred to in Section 12(h) of the Agreement that are delivered concurrently with the delivery of this Compliance Certificate, if any, and otherwise those most recently delivered pursuant to Section 12(h) of the Agreement, if any, to my knowledge after due inquiry, fairly and accurately present in all material respects, (i) in the case of financial statements, the consolidated financial condition and operations of Guarantor at such date and the consolidated results of their operations for the period then ended, in accordance with GAAP applied consistently throughout such period and with prior periods (subject to absence of footnotes and normal year-end adjustments in the case of unaudited statements) and (ii) in the case of deliveries other than financial statements, the matters set forth therein as of the dates and for the periods covered thereby.
- (f) I have reviewed the terms of the Agreement and have made, or have caused to be made under my supervision, a detailed review of the transactions and financial condition of Seller and Guarantor during the accounting period covered by the financial statements delivered concurrently with the delivery of this Compliance Certificate as set forth in paragraph (e) (or most recently delivered to Buyer if none are delivered concurrently herewith).

Exhibit E-1

(g) The examinations described in paragraph (f) did not disclose, and I have no knowledge of, the existence of any condition or event that constitutes a Credit Event during or at the end of the accounting period covered by the financial statements described in paragraph (e) or as of the date of this Compliance Certificate, except as follows:

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(h) The information furnished in the attached Schedule 3 with respect to each Purchased Asset subject to a Transaction as of the date of this Compliance Certificate is true, correct and complete in all material respects as of the last day of the calendar quarter immediately preceding the date of this Compliance Certificate.

(i) All representations and warranties contained in the Agreement are true and correct in all material respects on and as of the date of this Compliance Certificate as though made on and as of such day and shall be deemed to be made on such day (or, if any such representation or warranty is expressly stated to have been made only as of a specific date, as of such specific date).

(j) All Purchased Assets remain Eligible Assets.

(k) To my knowledge, after due inquiry, Seller and Guarantor have observed or performed all of their respective covenants, duties and other agreements, and satisfied every condition, contained in the Agreement and the related documents to be observed, performed or satisfied by them in all material respects. No Default or Event of Default exists as of the date hereof or existed at any time during the calendar month immediately preceding the date of this Compliance Certificate, except as follows:

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Executed the \_\_\_ day of \_\_\_\_\_, 20\_\_ in the undersigned's capacity as an officer of Seller and not in an individual capacity.

Very truly yours,

[•]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit E-3

**SCHEDULE 1 TO COMPLIANCE CERTIFICATE**

(i) the product of the UPB Applicable Pricing Percentage or such lower number that was used to calculate the Purchase Price on the Purchase Date and the outstanding principal balance of \_\_\_\_\_ is equal to \$ \_\_\_\_\_;

(ii) the product of the Property Value Applicable Pricing Percentage or such lower number that was used to calculate the Purchase Price on the Purchase Date and the Property Value of \_\_\_\_\_ is equal to \$ \_\_\_\_\_;<sup>5</sup>

<sup>5</sup> \_\_\_\_\_  
Include as many calculations as there are Purchased Assets.

Exhibit E-4

**SCHEDULE 2 TO COMPLIANCE CERTIFICATE**

[Attached]

Exhibit E-5

**SCHEDULE 3 TO COMPLIANCE CERTIFICATE**

**Loan Portfolio Overview for each Purchased Asset:**

[To be added in the same form and substance as presented in Guarantor's quarterly 10-Q filing.]

**Loan Risk Rating for each Purchased Asset:**

[To be added in the same form and substance as presented in Guarantor's quarterly 10-Q filing.]

**For each Purchased Asset, any disclosure required for impairment purposes by Guarantor's quarterly 10-Q filing:**

[To be added.][N/A]

Exhibit E-6

FORM OF POWER OF ATTORNEY

[•], 2022

Know All Men by These Presents, that FS CREIT Finance NTX-1 LLC (“Seller”), does hereby appoint Natixis, New York Branch (“Buyer”) its attorney-in-fact to act in Seller’s name, place and stead in any way that Seller could do with respect to the enforcement of Seller’s rights under the Purchased Assets purchased by Buyer pursuant to the Master Repurchase Agreement and Securities Contract dated as of November 10, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “Repurchase Agreement”), between Buyer and Seller, and to take such other actions as may be necessary or desirable to enforce Buyer’s rights in such Purchased Assets, the related Purchased Asset Files and the Servicing Records to the extent that Seller is permitted by law to act through an agent. This Power of Attorney is a power coupled with an interest and shall be irrevocable. Capitalized terms used herein without definition shall have the meanings given in the Repurchase Agreement.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, SELLER HEREBY AGREES THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY FROM BUYER, AND SELLER ON ITS OWN BEHALF AND ON BEHALF OF SELLER’S ASSIGNS, HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

Exhibit F-2



IN WITNESS WHEREOF Seller has caused this Power of Attorney to be executed as of the date first written above.

**FS CREIT FINANCE NTX-1 LLC**, as Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF            )  
                          ) ss.:  
COUNTY OF        )

On \_\_\_\_\_, before me, \_\_\_\_\_ Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary signature

REPRESENTATIONS AND WARRANTIES REGARDING WHOLE LOANS AND A-NOTES

As used in this Exhibit G-1, "Seller Parties" shall mean, collectively, Seller, Guarantor, Pledgor and each Affiliated Originator.

1. The Purchased Asset is a performing A-Note or Whole Loan secured by a first priority mortgage or deed of trust in a multifamily, retail, office, hotel, self-storage or industrial property or a mixed-use property comprised of some combination of the foregoing secured in each case by Mortgaged Property located in one of the top 50 "Metropolitan Statistical Areas".

2. Such Purchased Asset complies in all material respects with, or such Purchased Asset is exempt from, all requirements of federal, state or local law relating to such Purchased Asset.

3. Immediately prior to the sale, transfer and assignment to Buyer thereof, Seller had good and marketable title to, and was the sole owner and holder of, such Purchased Asset, and Seller is transferring such Purchased Asset free and clear of any and all Liens encumbering such Purchased Asset other than the Permitted Liens and the Title Exceptions (as defined in paragraph 17 below). Upon consummation of the purchase contemplated to occur in respect of such Purchased Asset on the Purchase Date therefor, Seller will have validly and effectively conveyed to Buyer all legal and beneficial interest in and to such Purchased Asset free and clear of any Lien other than the Title Exceptions.

4. No fraudulent acts were committed by any Seller Party in connection with its acquisition or origination of such Purchased Asset nor, to Seller's actual knowledge (without any duty to inquire), were any fraudulent acts committed by any other Person in connection with the origination of such Purchased Asset.

5. All information prepared by any Seller Party and contained in the related Diligence Materials (including any supplemental information furnished by a Seller Party to Buyer pursuant to any Supplemental Due Diligence List) in respect of such Purchased Asset is accurate and complete in all material respects. To Seller's actual knowledge (without any duty to inquire), all information prepared by a Person other than a Seller Party and contained in the related Diligence Materials (including any supplemental information furnished by a Seller Party to Buyer pursuant to any Supplemental Due Diligence List) in respect of such Purchased Asset is accurate and complete in all material respects.

6. Except as included in the Diligence Materials, (i) no Seller Party is a party to any document, instrument or agreement, and there is no document, that by its terms modifies or affects the rights and obligations of any holder of such Purchased Asset and (ii) no Seller Party has consented to any material change or waiver to any term or provision of any such document, instrument or agreement and no such change or waiver exists.

7. Such Purchased Asset is presently outstanding and the proceeds thereof have been fully disbursed, other than (i) amounts held in escrow by or on behalf of Seller pursuant to the Purchased Asset Documents or (ii) in the case of a Future Funding Eligible Asset, any Future Funding that has not yet been advanced.

8. Seller has full right, power and authority to sell and assign such Purchased Asset to Buyer and such Purchased Asset or any related Mortgage Note has not been cancelled, satisfied or rescinded in whole or part nor has any instrument been executed that would effect a cancellation, satisfaction or rescission thereof.

9. Other than those already obtained as of the related Purchase Date or those already granted in the related Mortgage and/or Mortgage Note, no consent, approval by, authorization or order of, or registration or filing with, or notice to any Person, regulatory authority or court hearing is required in connection with Seller's sale, transfer or assignment of such Purchased Asset or Buyer's exercise of any rights or remedies in respect of such Purchased Asset or for Buyer's sale, pledge or other disposition of such Purchased Asset. No third party holds any "right of first refusal", "right of first negotiation", "right of first offer", purchase option, or other similar rights of any kind, and no other impediment exists to any such transfer or exercise of rights or remedies.

10. [Reserved].

11. No Seller Party has received written notice of any outstanding liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind for which the holder of such Purchased Asset is or may become obligated.

12. No Seller Party has advanced funds to, or knowingly received any advance of funds from, a party other than the Mortgagor (or for the benefit of, or at the direction of, Mortgagor) relating to such Purchased Asset, directly or indirectly, for the payment of any amount required to be paid pursuant to the terms of the related Purchased Asset Documents other than pursuant to the Purchased Asset Documents.

13. Each related Mortgage Note, Mortgage, Assignment of Leases (if a document separate from the Mortgage) and other Purchased Asset Document executed by the related Mortgagor in connection with such Purchased Asset is a legal, valid and binding obligation of the related Mortgagor (subject to any non-recourse provisions therein and any state anti-deficiency or market value limit deficiency legislation), enforceable in accordance with its terms, except (i) that certain provisions contained in such Purchased Asset Documents are or may be unenforceable in whole or in part under applicable state or federal laws, but neither the application of any such laws to any such provision nor the inclusion of any such provisions renders any of the Purchased Asset Documents invalid as a whole and such Purchased Asset Documents taken as a whole are enforceable to the extent necessary and customary for the practical realization of the rights and benefits afforded thereby and (ii) as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a

proceeding in equity or at law). The related Mortgage Note and Mortgage contain no provision limiting the right or ability of Seller to assign, transfer and convey the related Purchased Asset to any other Person, except, however, for (x) customary intercreditor restrictions limiting assignees to “qualified transferees” and (y) prohibitions against assignments, transfers or conveyances to any Mortgagor or any Affiliate of any Mortgagor, or to any “Embargoed Person” or a Person listed on a Government List. With respect to any Mortgaged Property that has tenants, there exists as either part of the Mortgage or as a separate document, an assignment of leases.

14. As of the date of its origination, there was no valid offset, defense, counterclaim, abatement or right to rescission with respect to any related Mortgage Note, Mortgage or other agreements executed in connection therewith, and, as of the Purchase Date, Mortgagor has not asserted, and there is no valid offset, defense, counterclaim or right to rescission with respect to any such Mortgage Note, Mortgage or other agreements, except in each case, with respect to the enforceability of any provisions requiring the payment of default interest, late fees, additional interest, prepayment premiums or yield maintenance charges.

15. Seller has delivered to Buyer or its designee the Purchased Asset Documents, including the original Mortgage Note(s) made in respect of such Purchased Asset, together with an original endorsement thereof executed by Seller in blank.

16. Each related Assignment of Mortgage and assignment of Assignment of Leases from Seller in blank constitutes the legal, valid and binding first priority assignment from Seller (assuming the insertion of Buyer’s name), except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors’ rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Each Mortgage and Assignment of Leases is freely assignable.

17. The Purchased Asset is secured by one or more Mortgages and each such Mortgage is a valid and enforceable first lien on the related Mortgaged Property subject only to the exceptions set forth in paragraph (13) above and the following title exceptions (each such title exception, a “Title Exception”, and collectively, the “Title Exceptions”): (a) the lien of current real property taxes, water charges, sewer rents and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor’s ability to pay its obligations under the Purchased Asset when they become due or, materially and adversely affects the value of the Mortgaged Property, (c) the exceptions (general and specific) and exclusions set forth in the applicable policy described in paragraph (22) below or appearing of record, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor’s ability to pay its obligations under the Purchased Asset when they become due or, materially and adversely affects the value of the Mortgaged Property, (d) other matters to which like properties are commonly subject, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor’s ability to pay its obligations under the Purchased Asset when they

become due or, unless expressly disclosed in the relevant Appraisal and accounted for in the Appraised Value of such Mortgaged Property, materially and adversely affects the value of the Mortgaged Property, (e) the right of tenants under written, unexpired leases with no right or option to purchase (whether under ground leases, space leases or operating leases) at the Mortgaged Property, (f) all other Permitted Liens and (g) if such Purchased Asset is cross-collateralized with any other Purchased Asset (a "Crossed Mortgage Loan"), the lien of the Mortgage for such other Purchased Asset, none of which, individually or in the aggregate, materially and adversely interferes with the current use of the Mortgaged Property or the security intended to be provided by such Mortgage or with the Mortgagor's ability to pay its obligations under the Purchased Asset when they become due or materially and adversely affects the value of the Mortgaged Property. Except with respect to cross-collateralized and cross-defaulted Purchased Assets and any Purchased Asset that includes one or more A-Notes, there are no mortgage loans that are *pari passu* with respect to the related Mortgaged Property or such Purchased Asset. There are no mortgage loans that are senior to or subordinated to any Purchased Asset or the related Mortgaged Property and there are no mezzanine loans secured by pledges of direct or indirect ownership interests in Mortgagor.

18. UCC financing statements have been filed and/or recorded (or, if not filed and/or recorded, have been submitted in proper form for filing and recording), in all public places necessary to perfect a valid security interest in all items of personal property located on the Mortgaged Property that are owned by the Mortgagor (other than any personal property subject to a purchase money security interest or a sale and leaseback financing arrangement permitted under the terms of such Purchased Asset or any other personal property leases applicable to such personal property), to the extent perfection may be effected pursuant to applicable law by recording or filing.

19. The Mortgages, security agreements, chattel Mortgages or equivalent documents related to and delivered in connection with the related Purchased Asset establish and create a valid and enforceable lien and priority security interest on all items of personal property located on the Mortgaged Property that are owned by the Mortgagor, except as such enforcement may be limited by bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditor's rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Notwithstanding any of the foregoing, no representation is made as to the perfection of any security interest in rents, accounts or other personal property to the extent that possession or control of such items or actions other than the filing of UCC financing statements is required in order to effect such perfection.

20. All real estate taxes and governmental assessments, or installments thereof that would be a lien on the Mortgaged Property and that prior to the Purchase Date have become delinquent in respect of the Mortgaged Property have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established. For purposes of this representation and warranty, real estate taxes and governmental assessments and installments thereof shall not be considered delinquent until the earlier of (a) the date on which interest and/or penalties would first be payable thereon and (b) the date on which an enforcement action is entitled to be taken by the related taxing authority.

21. Seller or any other Originator of the Purchased Asset inspected or caused to be inspected each related Mortgaged Property within six (6) months of origination of the Purchased Asset and within twelve (12) months of the related Purchase Date, and any reports prepared in connection with such inspections were delivered to Buyer. An engineering report or property condition assessment was prepared in connection with the origination of such Purchased Asset no more than twelve (12) months prior to the related Purchase Date, and delivered to Buyer. To Seller's knowledge, as of the Purchase Date, the related Mortgaged Property was free and clear of any material damage (other than deferred maintenance for which escrows were established at origination) that would affect materially and adversely the value of such Mortgaged Property as security for the Purchased Asset and there was no proceeding pending or, based solely upon the delivery of written notice thereof from the appropriate condemning authority, threatened for the total or partial condemnation of such Mortgaged Property.

22. The lien of each related Mortgage as a first priority lien in the original principal amount of such Purchased Asset after all advances of principal is insured by an ALTA lender's title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, insuring Seller and its successors and assigns, subject only to the Title Exceptions; the Mortgagee or its successors or assigns is the sole named insured of such policy; such policy is assignable without consent of the insurer and will inure to the benefit of Buyer as Mortgagee of record; such title policy is in full force and effect; all premiums thereon have been paid; no claims have been made under such policy and no circumstance exists that would impair or diminish the coverage of such policy. The insurer issuing such policy is (x) a nationally-recognized title insurance company and (y) qualified to do business in the jurisdiction in which the related Mortgaged Property is located to the extent required; such policy contains no material exclusions for, or affirmatively insures (except for any Mortgaged Property located in a jurisdiction where such insurance is not available) (a) access to public road and (b) against any loss due to encroachments of any material portion of the improvements thereon.

23. As of the date of its origination, all insurance coverage required under each related Mortgage, which insurance covered such risks as were customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the Mortgaged Property in the jurisdiction in which such Mortgaged Property is located, and with respect to a fire and extended perils insurance policy, is in an amount (subject to a customary deductible) at least equal to the lesser of (i) the replacement cost of improvements located on such Mortgaged Property, or (ii) the outstanding principal balance of the Whole Loan or A-Note, and in any event, the amount necessary to prevent operation of any co-insurance provisions; and, except if such Mortgaged Property is operated as a mobile home park, is also covered by business interruption or rental loss insurance, in an amount at least equal to twelve (12) months of operations of the related Mortgaged Property, all of which was in full force and effect with respect to the related Mortgaged Property; and all insurance coverage required under each Mortgage, which insurance covers such risks and is in such amounts as are customarily acceptable to prudent commercial and multifamily mortgage lending institutions lending on the security of property comparable to the related Mortgaged Property in the jurisdiction in which such Mortgaged Property is located, is in full force and effect with respect to the related Mortgaged Property; all premiums due and payable through the Purchase Date have been paid; and no notice of termination or cancellation with respect to any such insurance policy has been received by Seller; and except for certain amounts not greater than amounts that

would be considered prudent by an institutional commercial and/or multifamily mortgage lender with respect to a similar Whole Loan or A-Note that are set forth in the related Mortgage, any insurance proceeds in respect of a casualty loss, will be applied either (i) to the repair or restoration of all or part of the related Mortgaged Property or (ii) the reduction of the outstanding principal balance of the Whole Loan or A-Note, subject in either case to requirements with respect to leases at the related Mortgaged Property and to other exceptions customarily provided for by prudent institutional lenders for similar loans. The related Mortgaged Property is also covered by comprehensive general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or about the related Mortgaged Property, in an amount customarily required by prudent institutional lenders. An architectural or engineering consultant has performed an analysis of the Mortgaged Properties located in seismic zone 3 or 4 in order to evaluate the structural and seismic condition of such property, for the sole purpose of assessing the probable maximum loss (“PML”) for the Mortgaged Property in the event of an earthquake. In such instance, the PML was based on a 475 year lookback with a 10% probability of exceedance in a 50 year period. If the resulting report concluded that the PML would exceed 20% of the amount of the replacement costs of the improvements, earthquake insurance on such Mortgaged Property was obtained by an insurer rated at least A-:V by A.M. Best Company or “BBB-” (or the equivalent) from S&P and Fitch or “Baa3” (or the equivalent) from Moody’s. If the Mortgaged Property is located in Florida or within 25 miles of the coast of Texas, Louisiana, Mississippi, Alabama, Georgia, North Carolina or South Carolina such Mortgaged Property is insured by windstorm insurance in an amount at least equal to the lesser of (i) the outstanding principal balance of such Whole Loan or A-Note and (ii) 100% of the full insurable value, or 100% of the replacement cost, of the improvements located on the related Mortgaged Property. The insurance policies contain a standard mortgagee clause naming Seller and its successors and assigns as Mortgagee or loss payee, in the case of a property insurance policy, and as an additional insured in the case of a liability insurance policy and provide that they are not terminable without thirty (30) days prior written notice to the Mortgagee (or, with respect to non-payment, ten (10) days prior written notice to the Mortgagee) or such lesser period as prescribed by applicable law. Each Mortgage requires that the Mortgagor maintain insurance as described above or permits the Mortgagee to require insurance as described above, and permits the Mortgagee to purchase such insurance at the Mortgagor’s expense if Mortgagor fails to do so.

24. On the Purchase Date for the related Purchased Asset, (a) other than payments due but not yet thirty (30) days or more delinquent, there is no material default, breach, violation or event of acceleration existing under the related Mortgage or the related Mortgage Note, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default, breach, violation or event of acceleration, provided, however, that this representation and warranty does not address or otherwise cover any default, breach, violation or event of acceleration that specifically pertains to any matter otherwise covered by any other representation and warranty made by Seller in any paragraph of this Exhibit G-1 and (b) Seller has not waived any material default, breach, violation or event of acceleration under such Mortgage or Mortgage Note and pursuant to the terms of the related Mortgage or the related Mortgage Note and other documents in the related Purchased Asset Documents no Person or party other than the holder of such Mortgage Note may declare any event of default or accelerate the related indebtedness under either of such Mortgage or Mortgage Note.

Exhibit G-1-6

25. The Purchased Asset is not, and since origination, has not been, thirty (30) days or more past due in respect of any scheduled payment.

26. Each related Mortgage does not provide for or permit, without the prior written consent of the holder of the Mortgage Note, the related Mortgaged Property to secure any other promissory note or obligation except as expressly described in such Mortgage.

27. To the extent such Purchased Asset is identified by Seller as a REMIC Eligible Asset, such Purchased Asset constitutes a “qualified mortgage” within the meaning of Section 860G(a)(3) of the Code (without regard to Treasury Regulations Sections 1.860G-2(a)(3) or 1.860G-2(f)(2) which treats a “defective obligation” as a qualified mortgage under certain limited circumstances), is directly secured by a Mortgage on a commercial property or multifamily residential property, and (A) the issue price of such Purchased Asset to the related Mortgagor at origination did not exceed the non-contingent principal amount of the Purchased Asset and (B) either (1) substantially all of the proceeds of such Purchased Asset were used to acquire, improve or protect the portion of such commercial or multifamily residential property that consists of an interest in real property (within the meaning of Treasury Regulations Sections 1.856-3(c) and 1.856-3(d)) and such interest in real property was the only security for such Purchased Asset as of the Testing Date (as defined below), or (2) the fair market value of the interest in real property that secures such Purchased Asset was at least equal to 80% of the principal amount of the Purchased Asset (a) as of the Testing Date, or (b) as of the Purchase Date for such Purchased Asset. For purposes of the previous sentence, (1) the fair market value of the referenced interest in real property shall first be reduced by (a) the amount of any lien on such interest in real property that is senior to the Purchased Asset, and (b) a proportionate amount of any lien on such interest in real property that is on a parity with the Purchased Asset, and (2) the “Testing Date” shall be the date on which the referenced Purchased Asset was originated unless (a) such Purchased Asset was modified after the date of its origination in a manner that would cause a “significant modification” of such Purchased Asset within the meaning of Treasury Regulations Section 1.1001-3(b), and (b) such “significant modification” did not occur at a time when such Purchased Asset was in default or when default with respect to such Purchased Asset was reasonably foreseeable in which case the Testing Date shall be the date upon which the latest such “significant modification” occurred.

28. A Phase I environmental site assessment and, with respect to certain Purchased Assets, a Phase II environmental site assessment (or update of a previous Phase I and/or Phase II site assessment) (collectively, an “ESA”), meeting American Society for Testing and Materials requirements was conducted by a reputable environmental consultant in connection with such Purchased Asset within twelve (12) months prior to its origination date (or an update of a previous ESA was prepared) and delivered to Buyer. There is no material and adverse environmental condition or circumstance affecting the Mortgaged Property and if such condition or circumstance does exist, then at least one of the following statements is true: (A) an amount reasonably estimated by a reputable environmental consultant to be sufficient to cover the estimated cost to cure any material noncompliance with applicable Environmental Laws or the environmental condition has been escrowed by the related Mortgagor and is held or controlled by the related lender; (B) if the only environmental condition relates to the presence of asbestos-containing materials, radon in indoor air, lead based paint or lead in drinking water, the only recommended action in the ESA is the institution of such a plan, an operations or



maintenance plan has been required to be instituted by the related Mortgagor that can reasonably be expected to mitigate the identified risk; (C) the environmental condition identified in the related environmental report was remediated or abated in all material respects prior to the date hereof, and, if and as appropriate, a no further action or closure letter was obtained from the applicable Governmental Authority (or the environmental issue affecting the related Mortgaged Property was otherwise listed by such Governmental Authority as "closed" or a reputable environmental consultant has concluded that no further action is required); or (D) an environmental policy or a lender's pollution legal liability insurance policy meeting the requirements set forth below that covers liability for the identified circumstance or condition was obtained from an insurer rated no less than "A-" (or the equivalent) by Moody's, S&P and/or Fitch; there is no material violation of any applicable Environmental Law with respect to the Mortgaged Property; neither Seller nor the Mortgagor has taken any actions that would cause the Mortgaged Property not to be in compliance with all applicable Environmental Laws; the underlying Purchased Asset Documents require the Mortgagor to comply with all Environmental Laws; and each Mortgagor has agreed to indemnify the Mortgagee for any losses resulting from any material, adverse environmental condition or failure of the Mortgagor to abide by such Environmental Laws or has provided environmental insurance.

29. Each related Mortgage and Assignment of Leases contains customary enforceable provisions for comparable mortgaged properties similarly situated such as to render the rights and remedies of the holder thereof adequate for the practical realization against the Mortgaged Property of the benefits of the security in accordance with applicable law, including realization by judicial or, if applicable, non judicial foreclosure, subject to the effects of bankruptcy, insolvency, receivership, reorganization, moratorium, redemption, liquidation or other laws relating to or affecting the enforcement of creditors' rights generally, or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

30. No Mortgagor is a debtor in any state or federal bankruptcy or insolvency proceeding.

31. Such Purchased Asset is a Whole Loan or A-Note and contains no equity participation by Mortgagee or shared appreciation feature and does not provide for any contingent or additional interest in the form of participation in the cash flow of the related Mortgaged Property or provide for negative amortization. Seller holds no preferred equity interest in the direct or indirect owner of the Mortgaged Property and no Seller Party has any obligations to make capital contributions to Mortgagor under the Whole Loan or A-Note (specifically excluding any Future Funding).

32. Subject to certain exceptions, which are customarily acceptable to prudent commercial and multifamily lending institutions lending on the security of property comparable to the related Mortgaged Property, each related Mortgage or loan agreement contains provisions for the acceleration of the payment of the outstanding principal balance of such Purchased Asset if, without complying with the requirements of the Mortgage or loan agreement, (a) the related Mortgaged Property, or any controlling interest in the related Mortgagor, is directly transferred or sold (other than by reason of family and estate planning transfers, transfers by devise, descent or operation of law upon the death of a member, general partner or shareholder of the related

borrower and transfers of less than a controlling interest (as such term is defined in the related Purchased Asset Documents) in a mortgagor, issuance of non-controlling new equity interests, transfers among existing members, partners or shareholders in the Mortgagor or an affiliate thereof, transfers among affiliated Mortgagors with respect to Purchased Assets which are cross-collateralized or cross-defaulted with other mortgage loans or transfers of a similar nature to the foregoing meeting the requirements of the Purchased Asset (such as pledges of ownership interests that do not result in a change of control) or a substitution or release of collateral within the parameters of paragraph (35) below), or (b) the related Mortgaged Property or controlling interest in the Mortgagor is encumbered in connection with subordinate financing by a lien or security interest against the related Mortgaged Property, other than any existing permitted additional debt or Title Exceptions. The Purchased Asset Documents require the Mortgagor to pay all reasonable costs incurred by Mortgagee with respect to any transfer, assumption or encumbrance requiring Mortgagee's approval.

33. Except as set forth in the related Purchased Asset Documents delivered to Buyer, the terms of the related Mortgage Note(s) and Mortgage(s) have not been waived, modified, altered, satisfied, impaired, canceled, subordinated or rescinded in any manner which materially interferes with the security intended to be provided by such Mortgage and no such waiver, modification, alteration, satisfaction, impairment, cancellation, subordination or rescission has occurred since the date upon which the due diligence file related to the applicable Purchased Asset was delivered to Buyer or its designee.

34. Each related Mortgaged Property was inspected by or on behalf of the related originator or an affiliate during the twelve (12) month period prior to the related origination date.

35. Since origination, no material portion of the related Mortgaged Property has been released from the lien of the related Mortgage in any manner that materially and adversely affects the value of the Purchased Asset or materially interferes with the security intended to be provided by such Mortgage, and, except with respect to Purchased Assets (a) that permits defeasance by means of substituting for the Mortgaged Property (or, in the case of a Purchased Asset secured by multiple Mortgaged Properties, one or more of such Mortgaged Properties) "government securities" as defined in the Investment Company Act of 1940, as amended, sufficient to pay the Purchased Assets (or portions thereof) in accordance with its terms, (b) where a release of the portion of the Mortgaged Property was contemplated at origination and such portion was not considered material for purposes of Seller's underwriting of the Purchased Asset, (c) where release is conditioned upon the satisfaction of certain underwriting and legal requirements (including the REMIC Provisions, if applicable) and the payment of a release price that represents adequate consideration for such Mortgaged Property or the portion thereof that is being released, (d) that permits the related Mortgagor to substitute a replacement property in compliance with the REMIC Provisions or (e) that permits the release(s) of unimproved out-parcels or other portions of the Mortgaged Property that will not result in a material adverse effect on the underwritten value of the security for the Purchased Asset or that were not allocated to any value in the underwriting during the origination of the Purchased Asset, the terms of the related Mortgage do not provide for release of any portion of the Mortgaged Property from the lien of the Mortgage except in consideration of payment in full therefor.

Exhibit G-1-9

With respect to any partial release, either: (x) such release of collateral (i) would not constitute a “significant modification” of the subject Purchased Asset within the meaning of Treasury Regulations Section 1.860G-2(b)(2) and (ii) would not cause the subject Purchased Asset to fail to be a “qualified mortgage” within the meaning of Section 860G(a)(3)(A) of the Code; or (y) the mortgagee or servicer can, in accordance with the related Purchased Asset Documents, condition such release of collateral on the related Mortgagor’s delivery of an opinion of tax counsel to the effect specified in the immediately preceding clause (x). For purposes of the preceding clause (x), for any Purchased Asset originated after December 6, 2010, if the fair market value of the real property constituting such Mortgaged Property after the release is not equal to at least 80% of the principal balance of the Purchased Asset outstanding after the release, the Mortgagor is required to make a payment of principal in an amount not less than the amount required by the REMIC Provisions.

In the case of any identified REMIC Eligible Asset, in the event of a taking of any portion of a Mortgaged Property by a state or any political subdivision or authority thereof, whether by legal proceeding or by agreement, the Mortgagor can be required to pay down the principal balance of the Purchased Asset in an amount not less than the amount required by the REMIC Provisions and, to such extent, condemnation proceeds may not be required to be applied to the restoration of the Mortgaged Property or released to the Mortgagor, if, immediately after the release of such portion of the Mortgaged Property from the lien of the Mortgage (but taking into account the planned restoration) the fair market value of the real property constituting the remaining Mortgaged Property (reduced by (A) the amount of any lien on the real property interest that is senior to the Purchased Asset and (B) a proportionate amount of any lien that is in parity with the Purchased Asset) is not equal to at least 80% of the remaining principal balance of the Purchased Asset.

No Purchased Asset that is identified as a REMIC Eligible Asset that is secured by more than one Mortgaged Property or that is a Crossed Mortgage Loan permits the release of cross-collateralization of the related Mortgaged Properties or a portion thereof, including due to a partial condemnation, other than in compliance with the loan-to-value ratio and other requirements of the REMIC Provisions.

36. There are no material violations of any applicable zoning ordinances, building codes or land laws applicable to the Mortgaged Property or the use and occupancy thereof that (i) are not insured by an ALTA lender’s title insurance policy (or a binding commitment therefor), or its equivalent as adopted in the applicable jurisdiction, or a law and ordinance insurance policy or (ii) would have a material adverse effect on the value, operation or net operating income of the Mortgaged Property. The Purchased Asset Documents require the Mortgaged Property to comply with all applicable laws and ordinances.

37. None of the material improvements that were included for the purposes of determining the appraised value of the related Mortgaged Property at the time of the origination of the Purchased Asset lies outside of the boundaries and building restriction lines of such property (except Mortgaged Properties that are legal non-conforming uses), to an extent that they would have a material adverse effect on the value of the Mortgaged Property or related Mortgagor’s use and operation of such Mortgaged Property (unless affirmatively covered by title insurance) and no improvements on adjoining properties encroached upon such Mortgaged Property to any material and adverse extent (unless affirmatively covered by title insurance).

38. The related Mortgagor has covenanted in its organizational documents and/or the Purchased Asset Documents to own no asset other than the related Mortgaged Property, as applicable, and assets incidental to its ownership and operation of such Mortgaged Property, and to hold itself out as being a legal entity, separate and apart from any other Person.

39. No advance of funds has been made other than pursuant to the Purchased Asset Documents, directly or indirectly, by Seller to the Mortgagor and no funds have been received from any Person other than the Mortgagor, for or on account of payments due on the Mortgage Note or the Mortgage.

40. [Reserved].

41. As of the Purchase Date, there was no pending action, suit or proceeding, or governmental investigation of which any Seller Party has received notice, against the Mortgagor or the related Mortgaged Property the adverse outcome of which could reasonably be expected to materially and adversely affect such Mortgagor's ability to pay principal, interest or any other amounts due under such Purchased Asset or the security intended to be provided by the Purchased Asset Documents or the current use of the Mortgaged Property.

42. As of the Purchase Date, if the related Mortgage is a deed of trust, a trustee, duly qualified under applicable law to serve as such, has either been properly designated and serving under such Mortgage or may be substituted in accordance with the Mortgage and applicable law.

43. The Purchased Asset and the interest (exclusive of any default interest, late charges, or prepayment premiums or yield maintenance) contracted for complied as of the date of origination with, or is exempt from, applicable state or federal laws, regulations and other requirements pertaining to usury.

44. Each Purchased Asset that is cross-collateralized is cross-collateralized only with other Purchased Assets sold pursuant to this Agreement.

45. The improvements located on the Mortgaged Property are either not located in a federally designated special flood hazard area or, if so located, the Mortgagor is required to maintain or the Mortgagee maintains, flood insurance with respect to such improvements and, such policy is in full force and effect in an amount no less than the lesser of (i) the original principal balance of the Purchased Asset, (ii) the value of such improvements on the related Mortgaged Property located in such flood hazard area or (iii) the maximum allowed under the related federal flood insurance program.

46. All escrow deposits and payments required pursuant to the Purchased Asset as of the Purchase Date required to be deposited with Seller in accordance with the Purchased Asset Documents have been so deposited, and are in the possession, or under the control, of Seller or its agent (including the applicable Servicer) and there are no deficiencies in connection therewith.

47. As of the Purchase Date, the related Mortgagor, the related lessee, franchisor or operator was in possession of all material licenses, permits and authorizations then required for use of the related Mortgaged Property by the related Mortgagor. The Purchased Asset Documents require the borrower to maintain all such licenses, permits and authorizations.

48. The origination (or acquisition, as the case may be), servicing and collection practices used by Seller with respect to the Purchased Assets have been in all respects legal and such servicing and collection practices have met customary industry standards for servicing of commercial mortgage loans similar to such Purchased Asset.

49. Except for Mortgagors under Purchased Assets the Mortgaged Property with respect to which includes a Ground Lease, the related Mortgagor (or its affiliate) has title in the fee simple interest in each related Mortgaged Property.

50. The Purchased Asset Documents for such Purchased Asset provide that such Purchased Asset is non-recourse to the related Mortgagor except that the related Mortgagor and an additional guarantor accept responsibility for any loss incurred due to fraud on the part of the Mortgagor and/or other intentional material misrepresentation. Furthermore, the Purchased Asset Documents for each Purchased Asset provide that the related Mortgagor and an additional guarantor shall be liable to Mortgagee for losses incurred due to the misapplication or misappropriation of rents collected in advance or received by the related Mortgagor after the occurrence of an event of default and not paid to the Mortgagee or applied to the Mortgaged Property in the ordinary course of business, misapplication or conversion by the Mortgagor of insurance proceeds or condemnation awards or breach of the environmental covenants in the related Purchased Asset Documents, or any transfer in violation of transfer restrictions set forth in the related Purchased Asset Documents. In addition, the Purchased Asset Documents for such Purchased Assets provide for full recourse to the related Mortgagor and an additional guarantor for the voluntary or involuntary bankruptcy of such Mortgagor and/or such additional guarantor if, with respect to an involuntary bankruptcy, such Mortgagor and/or such additional guarantor consents to, aids, solicits, supports, or otherwise cooperates or colludes in such involuntary bankruptcy.

51. Subject to the exceptions set forth in paragraph (13) and upon possession of the Mortgaged Property as required under applicable state law, any Assignment of Leases set forth in the Mortgage or separate from the related Mortgage and related to and delivered in connection with such Purchased Asset establishes and creates a valid, subsisting and enforceable lien and security interest in the related Mortgagor's interest in all leases, subleases, licenses or other agreements pursuant to which any Person is entitled to occupy, use or possess all or any portion of the real property.

52. With respect to such Purchased Asset, any prepayment premium and yield maintenance charge constitutes a "customary prepayment penalty" within the meaning of Treasury Regulations Section 1.860G-1 (b)(2).

53. If such Purchased Asset contains a provision for any defeasance of mortgage collateral, such Purchased Asset permits defeasance (1) no earlier than two years after any securitization of such Purchased Asset and (2) only with substitute collateral constituting “government securities” within the meaning of Treasury Regulations Section 1.860G-2(a)(8) in an amount sufficient to make all scheduled payments under the Mortgage Note. In addition, if such Mortgage contains such a defeasance provision, it provides (or otherwise contains provisions pursuant to which the holder can require) that an opinion be provided to the effect that such holder has a first priority perfected security interest in the defeasance collateral. The related Purchased Asset Documents permit the Mortgagee to charge all of its expenses associated with a defeasance to the Mortgagor (including rating agencies’ fees, accounting fees and attorneys’ fees), and provide that the related Mortgagor must deliver (or otherwise, the Purchased Asset Documents contain certain provisions pursuant to which Mortgagee can require) (a) an accountant’s certification as to the adequacy of the defeasance collateral to make payments under the related Purchased Asset for the remainder of its term, (b) an opinion of counsel that the REMIC trust formed pursuant to such securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of such defeasance, and (c) assurances from each applicable nationally recognized statistical rating agency that the defeasance will not result in the withdrawal, downgrade or qualification of the ratings assigned to any certificates backed by the related Purchased Asset.

54. To the extent required under applicable law as of the date of origination, and necessary for the enforceability or collectability of the Purchased Asset, the Originator of such Purchased Asset was authorized to do business in the jurisdiction in which the related Mortgaged Property is located at all times when it originated and held the Purchased Asset.

55. No Seller Party has any obligation to make any future capital contributions to the Mortgagor under the Purchased Asset (specifically excluding any Future Funding).

56. The related Mortgaged Property is not encumbered, and none of the Purchased Asset Documents permits the related Mortgaged Property to be encumbered subsequent to the Purchase Date without the prior written consent of the holder of such Purchased Asset, by any lien securing the payment of money junior to or of equal priority with, or superior to, the lien of the related Mortgage (other than Title Exceptions, taxes, assessments and contested mechanic’s and materialman’s liens that become due after the Purchase Date of the related Purchased Asset).

57. Each related Mortgaged Property constitutes one or more complete separate tax lots (or the related Mortgagor has covenanted to obtain separate tax lots and a Person has indemnified the Mortgagee for any loss suffered in connection therewith or an escrow of funds in an amount sufficient to pay taxes resulting from a breach thereof has been established) or is subject to an endorsement under the related title insurance policy.

58. An appraisal of the related Mortgaged Property was conducted no more than three (3) months prior to the Purchase Date with respect such Purchased Asset and has been delivered to Buyer; and such appraisal satisfied either (A) the requirements of the “Uniform Standards of Professional Appraisal Practice” as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (B) the guidelines in Title XI of FIRREA, in either case as in effect on the date such Purchased Asset was originated.

59. The related Purchased Asset Documents require the Mortgagor to provide the Mortgagee with certain financial information at the times required under the related Purchased Asset Documents.

60. The related Mortgaged Property is served by public utilities, water and sewer (or septic facilities) and otherwise appropriate for the use for which the Mortgaged Property is currently being utilized.

61. At all times throughout the term of the Purchased Asset, including after giving effect to any transfers permitted pursuant to the Purchased Asset Documents, (a) none of the funds or other assets of the related Mortgagor, any guarantor or any other obligor with respect to such Purchased Asset shall constitute property of, or shall be beneficially owned, directly or indirectly, by, any Embargoed Person or a Person listed on a Government List, with the result that the Purchased Asset made by the applicable Mortgagee with respect thereto is or would be in violation of law; (b) no Embargoed Person or any Person listed on a Government List shall have any interest of any nature whatsoever in any Mortgagor, guarantor or any other obligor, as applicable, with the result that the Purchased Asset is or would be in violation of law; and (c) none of the funds of Mortgagor, any guarantor or any other obligor with respect to such Purchased Asset, as applicable, shall be derived from any unlawful activity with the result that the Purchased Asset is or would be in violation of law.

62. With respect to each related Mortgaged Property consisting of a Ground Lease, Seller represents and warrants the following with respect to the related Ground Lease:

(i) Such Ground Lease or a memorandum thereof has been or will be duly recorded no later than thirty (30) days after the Purchase Date and such Ground Lease permits the interest of the lessee thereunder to be encumbered by the related Mortgage or, if consent of the lessor thereunder is required, it has been obtained prior to the Purchase Date.

(ii) Upon the foreclosure of the Purchased Asset (or acceptance of a deed in lieu thereof), the Ground Lease is assignable to the holder of the Purchased Asset and its successors and assigns without the consent of the lessor thereunder (or, if any such consent is required, it has been obtained prior to the Purchase Date).

(iii) Such Ground Lease may not be amended, modified, canceled or terminated without the prior written consent of the Mortgagee and any such action without such consent is not binding on the Mortgagee, its successors or assigns, except termination or cancellation without such consent may be binding on the Mortgagee if (i) an event of default occurs under the Ground Lease, (ii) notice thereof is provided to the Mortgagee and (iii) such default is curable by the Mortgagee as provided in the Ground Lease but remains uncured beyond the applicable cure period.

(iv) Such Ground Lease is in full force and effect.

(v) There is no material default under such Ground Lease, and there is no event that, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material default under such Ground Lease.

(vi) The Ground Lease or a separate agreement between the lessor and the lessee or Mortgagee requires the lessor to give notice of any default by the lessee to the Mortgagee. The Ground Lease or ancillary agreement further provides that no notice given is effective against the Mortgagee unless a copy has been given to the Mortgagee in a manner described in the Ground Lease or ancillary agreement.

(vii) The Ground Lease (i) is not subject to any liens or encumbrances superior to, or of equal priority with, the Mortgage, subject, however, to only the Title Exceptions and ground lessor's fee interest in the property or (ii) is subject to a subordination, non-disturbance and attornment agreement to which the mortgagee of the lessor's fee interest in the Mortgaged Property is subject.

(viii) A mortgagee is permitted a reasonable opportunity (including, where necessary, reasonable time to gain possession of the interest of the lessee under the Ground Lease) to cure any curable default under such Ground Lease before the lessor thereunder may terminate such Ground Lease.

(ix) Such Ground Lease has an original term (together with any extension options, whether or not currently exercised, set forth therein all of which can be exercised by the Mortgagee if the Mortgagee acquires the lessee's rights under the Ground Lease) that extends not less than twenty (20) years beyond the stated maturity date.

(x) Under the terms of such Ground Lease, any estoppel or consent letter received by the Mortgagee from the lessor, and the related Mortgage, taken together, any related insurance proceeds or condemnation award (other than in respect of a total or substantially total loss or taking) will be applied either to the repair or restoration of all or part of the related Mortgaged Property, with the Mortgagee or a trustee appointed by it having the right to hold and disburse such proceeds as repair or restoration progresses, or to the payment or defeasance of the outstanding principal balance of the Purchased Asset, together with any accrued interest (except in cases where a different allocation would not be viewed as commercially unreasonable by any commercial mortgage lender, taking into account the relative duration of the Ground Lease and the related Mortgage and the ratio of the market value of the related Mortgaged Property to the outstanding principal balance of such Purchased Asset).

(xi) The Ground Lease does not impose any restrictions on subletting that would be viewed as commercially unreasonable by a prudent commercial lender.

(xii) The ground lessor under such Ground Lease is required to enter into a new lease upon termination of the Ground Lease for any reason, including the rejection of the Ground Lease in bankruptcy.

63. Seller has complied in all material respects with all applicable anti-money laundering laws and regulations, including without limitation, the USA Patriot Act of 2001 with respect to the origination of the Purchased Asset, the failure to comply with which would have a material adverse effect on the Purchased Asset, and the Mortgagor of the related Purchased Asset is not an Embargoed Person or listed on any Government List.



## REPRESENTATIONS AND WARRANTIES REGARDING ELIGIBLE PARTICIPATION INTERESTS

1. The representations and warranties with respect to the related Whole Loan or A-Note set forth on Exhibit G-1, as modified by any Approved Exception Report, are true and correct.
2. The Eligible Participation Interest is a performing *pari passu* participation interest evidenced by a Participation Certificate retained by Seller in connection with a Whole Loan or A-Note previously subject to a Transaction under this Agreement.
3. Seller has good and marketable title to, and is the sole owner and holder of, such Eligible Participation Interest, Seller is transferring such Eligible Participation Interest free and clear of any and all liens, pledges, encumbrances, charges, security interests or any other ownership interests of any nature encumbering such Eligible Participation Interest, other than the first priority security interest of Buyer granted pursuant to this Agreement, and no Participation Certificate or other document evidencing the Eligible Participation Interest is subject to any assignment, participation, or pledge.
4. No default or event of default has occurred under any agreement pertaining to any lien or other interest that ranks *pari passu* or senior to the interests of the holder of such Eligible Participation Interest in respect of the related Mortgaged Property and Whole Loan or A-Note (as applicable) and there is no provision in any such agreement which would provide for any increase in the principal amount of any such lien or other interest.
5. No (i) monetary default, breach, or violation exists with respect to any agreement or other document governing or pertaining to such Eligible Participation Interest, (ii) material non-monetary default, breach or violation exists with respect to such Eligible Participation Interest, or (iii) event has occurred (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration. This representation and warranty does not cover any default, breach, or violation that specifically pertains to or arises out of an exception scheduled to any other representation and warranty made by Seller in this Exhibit G-2.
6. None of the Eligible Participation Interests (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a Security governed by Article 8 of the UCC, (iii) is Investment Property, (iv) is held in a Securities Account or (v) constitutes a Security or a Financial Asset. For purposes of this paragraph (6), capitalized terms undefined in this Agreement have the meaning given to such term in the Uniform Commercial Code.
7. No issuer of the Eligible Participation Interest or co-participant is a debtor in any state or federal bankruptcy or insolvency proceeding.

Exhibit G-2-1

8. Seller has full right, power and authority to sell and assign such Eligible Participation Interest and none of such Eligible Participation Interest, the related Whole Loan or A-Note, and any related Mortgage Note have been cancelled, satisfied or rescinded in whole or part nor has any instrument been executed that would effect a cancellation, satisfaction or rescission thereof.

9. Other than consents and approvals obtained as of the related Purchase Date or those already granted in the agreement related to the Eligible Participation Interest, no consent or approval by any Person is required in connection with (i) Seller's sale, and Buyer's acquisition of, such Eligible Participation Interest, (ii) Buyer's exercise of any rights or remedies in respect of such Eligible Participation Interest or (iii) Buyer's sale, pledge or other disposition of such Eligible Participation Interest. No third party holds any "right of first refusal", "right of first negotiation", "right of first offer", purchase option, or other similar rights of any kind with respect to the Eligible Participation Interest, and no other impediment exists to any such transfer or exercise of rights or remedies.

10. All documents comprising the Purchased Asset File with respect to each Eligible Participation Interest delivered by Seller will be or have been delivered to the Custodian by the deadlines set forth in the Program Documents.

Exhibit G-2-2

ORGANIZATIONAL CHART

Exhibit H-1



\* See following slide for list of additional Single Asset Subsidiaries

# Three CLOs issued to date with this structure: 2019-FL1, 2021-FL2 and 2021-FL3.

† Two CLOs issued to date with this structure: 2022-FL4, 2022-FL6

FS Rialto 2019-FL1, 2021-FL2 and 2021-FL3 each have a primary Cayman issuer and a Delaware co-issuer. Beginning with FS Rialto 2022-FL4 and for each CLO issued thereafter, the Delaware LLC is the sole issuer in the structure. To date, FL1-6 have closed. FL7 is in process.

See additional CLO organizational chart for details

- = Shell formed in advance of new financing facility
- = Taxed as Corporation
- = Taxed as a Partnership
- = Disregarded Entity

### FSCREIT Org Chart

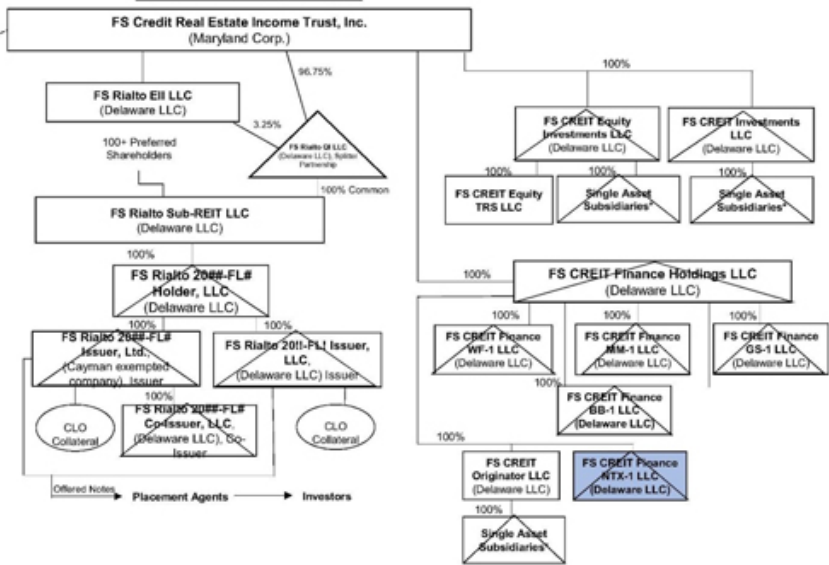


Exhibit H-2

FORM OF REDIRECTION LETTER

[ ]  
[ ]  
[ ]  
[ ]  
[ ]

REDIRECTION LETTER  
AS OF [ ], 20[ ]

Ladies and Gentlemen:

Please refer to: (a) that certain [Loan Agreement], dated [ ], 20[ ], by and between [ ] (the "Borrower"), as borrower, and FS CREIT Finance NTX-1 LLC, a Delaware limited liability company (the "Lender"), as lender; and (b) all documents securing or relating to that certain \$[ ] loan made by the Lender to the Borrower on [ ], 20[ ] (the "Loan").

You are advised as follows, effective as of the date of this letter.

Assignment of the Loan. The Lender has entered into a Master Repurchase Agreement and Securities Contract, dated as of November 10, 2022 (as the same may be amended and/or restated from time to time, the "Repo Agreement"), with Natixis, New York Branch ("Natixis"), [ ], and has assigned its rights and interests in the Loan (and all of its rights and remedies in respect of the Loan) to Natixis subject to the terms of the Repo Agreement. This assignment shall remain in effect unless and until Natixis has notified you otherwise in writing.

Direction of Funds. In connection with Lender's obligations under the Repo Agreement, Lender hereby directs you to disburse, by wire transfer, any and all payments to be made under or in respect of the Loan to the following account at [ ] for the benefit of Natixis:

[ ]  
ABA [ ]  
Account # [ ]  
Attn: [ ]  
Attn: [ ]

This direction shall remain in effect unless and until Natixis has notified you otherwise in writing.

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Modifications, Waivers, Etc. No modification, waiver, deferral, or release (in whole or in part) of any party's obligations in respect of the Loan, or of any collateral for any obligations in respect of the Loan, shall be effective without the prior written consent of Natixis.

Please acknowledge your acceptance of the terms and directions contained in this correspondence by executing a counterpart of this correspondence and returning it to the undersigned.

[Signature Page Follows]

Exhibit I-2

Very truly yours,

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed and accepted this [\_\_\_\_\_] day of [\_\_\_\_\_] 20[\_\_\_\_\_] [\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit I-3

DISQUALIFIED INSTITUTIONS

Each of the following institutions, each of their respective affiliates and each entity managed or advised by any of the following institutions (or any affiliate thereof):

1. Apollo Commercial Real Estate Finance, Inc.
2. Apollo Global Management, LLC
3. Apollo Capital Corp
4. ACORE Capital, LP
5. Arbor Realty Trust, Inc.
6. Ares Commercial Real Estate Corporation
7. Ares Management, L.P.
8. Argentic Investment Management LLC as Manager for the following:
  - a. Argentic Real Estate Finance LLC
  - b. Argentic Real Estate Investment LLC
  - c. Argentic Securities Holdings Cayman Limited
9. Benefit Street Partners LLC
10. Benefit Street Partners Realty Trust, Inc.
11. The Blackstone Group L.P.
12. Blackstone Mortgage Trust
13. BrightSpire Capital, Inc.
14. Brookfield Asset Management LLC
15. Cerberus Real Estate Capital Management, LLC
16. Fortress Investment Group LLC
17. Granite Point Mortgage Trust Inc.
18. Guggenheim Real Estate, LLC
19. Guggenheim Investments
20. KKR Real Estate Finance Trust Inc.
21. KKR Real Estate Finance Manager LLC
22. Ladder Capital Corp
23. Loancore Capital
24. Mack Real Estate Group
25. Mesa West Capital, LLC
26. MF1/Limekiln Real Estate
27. Pine River Capital Management L.P.
28. Prime Group Realty Investments LLC
29. Related Group
30. USAA Real Estate Company
31. Starwood Real Estate Income Trust, Inc.
32. Starwood Property Trust, Inc.
33. Starwood Capital Group
34. Starwood Capital Group Management, L.L.C.
35. Terra Capital Partners, LLC
36. Torchlight Investors LLC
37. TPG Real Estate Finance Trust
38. TPG
39. Waterfall Asset Management, LLC



**EXHIBIT K**

**FORM OF PURCHASE PRICE MARGIN EXCESS REQUEST**

[\_\_\_\_\_], 20[ ]

Pursuant to Section 4(c) of that certain Master Repurchase Agreement and Securities Contract, dated as of November 10, 2022 (as amended, restated, supplemented or otherwise modified from time to time, the "Repurchase Agreement"), among Natixis, New York Branch, as Buyer, and FS CREIT Finance NTX-1 LLC, a Delaware limited liability company, as Seller, Seller hereby requests that Buyer transfer cash to Seller in an amount equal to the Purchase Price Margin Excess set forth below with respect to the following Purchased Asset:

Purchased Asset: [Insert Purchased Asset Name]

The outstanding Purchase Price is: \$[\_\_\_\_\_]

Purchase Price Margin Excess: \$[\_\_\_\_\_]

Capitalized terms used herein without definition have the meanings given in the Repurchase Agreement

[Signature Page Follows]

Exhibit K-1

---

Very truly yours,

[ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit K-2

**GUARANTY**

**GUARANTY**, dated as of November 10, 2022 (as amended, restated, supplemented or otherwise modified, this "Guaranty"), made by **FS CREDIT REAL ESTATE INCOME TRUST, INC.**, a Maryland corporation ("Guarantor"), for the benefit of **NATIXIS, NEW YORK BRANCH** ("Buyer").

**WITNESSETH:**

**WHEREAS**, Buyer and FS CREIT Finance NTX-1 LLC, a Delaware limited liability company (the "Seller"), are parties to that certain Master Repurchase Agreement and Securities Contract dated as of the date hereof (as amended, restated, supplemented or otherwise modified, the "Master Repurchase Agreement");

**WHEREAS**, Guarantor indirectly owns one hundred percent (100%) of the Capital Stock of Seller;

**WHEREAS**, Guarantor will benefit, directly and indirectly, from the execution, delivery and performance by Seller of the Program Documents, and the transactions contemplated by the Program Documents;

**WHEREAS**, it is a condition precedent to the initial funding under the Master Repurchase Agreement that Guarantor execute and deliver this Guaranty for the benefit of Buyer and Buyer is unwilling to enter into the Master Repurchase Agreement or the other Program Documents or the transactions contemplated thereby without the benefit of this Guaranty; and

**NOW, THEREFORE**, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and to induce Buyer to enter into the Master Repurchase Agreement and the other Program Documents, Guarantor hereby agrees as follows:

**ARTICLE I.  
DEFINITIONS; INTERPRETATION**

(a) Each of the definitions set forth on Exhibit A hereto are, solely for the purposes of Article V(f) hereof, hereby incorporated herein by reference. Unless otherwise defined herein, terms defined in the Master Repurchase Agreement and used herein shall have the meanings given to them in the Master Repurchase Agreement.

(b) The following terms shall have the meaning set forth below:

"Aggregate Recourse Amount" shall mean the total sum, for all Purchased Assets, of the applicable Recourse Percentage for each such Purchased Asset, multiplied by the then-currently unpaid aggregate outstanding Repurchase Price of each such Purchased Asset.

"Guaranteed Obligations" shall mean (i) all obligations and liabilities of Seller to Buyer, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, or whether for payment or for performance (including, without limitation, Price Differential accruing after the Repurchase Date for any Transaction and Price Differential accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency,

reorganization or like proceeding, relating to any Seller Party, whether or not a claim for post filing or post-petition interest is allowed in such proceeding), which arise under, or out of or in connection with the Master Repurchase Agreement, this Guaranty and any other Program Documents, whether on account of the Repurchase Price for the Purchased Assets, Price Differential, reimbursement obligations, fees, indemnities, costs or expenses (including, without limitation, reasonable fees and disbursements of external counsel to Buyer), in each case, that are required to be paid by Seller pursuant to the terms of such documents, all "claims" (as defined in Section 101 of the Bankruptcy Code) of Buyer against Seller or any other Seller Party and (ii) all court costs, enforcement costs and legal and other expenses (including reasonable fees and disbursements of external counsel) that are incurred by Buyer in the enforcement of any provision of the Program Documents, including, but not limited to, this Guaranty.

(c) The terms defined in this Guaranty have the meanings assigned to them in this Guaranty and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender. All references to articles, schedules and exhibits are to articles, schedules and exhibits in or to this Guaranty unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Guaranty shall refer to this Guaranty as a whole and not to any particular provision of this Guaranty. The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The term "include" or "including" shall mean without limitation by reason of enumeration. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

## ARTICLE II. NATURE AND SCOPE OF GUARANTY

(a) Guaranty of Obligations. Subject to the terms hereof, Guarantor hereby irrevocably and unconditionally guarantees and promises to Buyer and its successors, endorsees, transferees and assigns as a primary obligor the prompt and complete payment and performance by Seller of the Guaranteed Obligations as and when the same shall be due and payable (whether at the stated maturity, by acceleration or otherwise); provided however that (other than as set forth in the subsequent proviso) Guarantor's total aggregate liability under this Article II(a) shall not exceed an amount equal to the Aggregate Recourse Amount with respect to all Purchased Assets, measured at the time the Guaranteed Obligations become due and payable (the "Liability Cap"); provided however, that the Liability Cap shall not apply to the costs and expenses of enforcing this Guaranty.

(b) Liability Cap Carve Out. The Liability Cap shall not apply in the event that any of the following events or circumstances shall occur by or on behalf of Seller and/or Guarantor and payments made in connection with any of the following events or circumstances shall not accrue toward the Liability Cap:

(i) (A) the filing by the Seller, Pledgor, Guarantor or Affiliated Originator (each, a "Seller Party") of any voluntary petition under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law relating to the protection of creditors, or (B) the commencing, or authorizing the commencement, by any Seller Party of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law relating to the protection of creditors;

(ii) the solicitation by any Seller Party or any Seller Party otherwise colluding with petitioning creditors for any involuntary petition, case or proceeding against any Seller Party under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law relating to the protection of creditors;

(iii) any Seller Party seeking or consenting to the appointment of a receiver, trustee, custodian or similar official for any Seller Party or any substantial part of the property of any Seller Party;

(iv) the making by any Seller Party of a general assignment for the benefit of creditors of any Seller Party in connection with any case or proceeding described in the foregoing clauses (i) or (ii);

(v) any failure by Seller to comply with Section 13 of the Master Repurchase Agreement, which failure results in a substantive consolidation of Seller with any other entity;

(vi) any fraud or intentional material misstatement on the part of any Seller Party or any Affiliate thereof or any officer, director, partner, member, employee, agent or representative of any Seller Party or any Affiliate thereof in connection with the execution and delivery of the Master Repurchase Agreement and the other Program Documents, or any certificate, report, notice, financial statement, representation, warranty or other instrument or document furnished to Buyer by any Seller Party or any Affiliate thereof in connection with the Master Repurchase Agreement or any other Program Document on the Closing Date or during the term of the Master Repurchase Agreement; or

(vii) losses, damages, costs and expenses actually incurred by Buyer to the extent caused by any of the following matters:

(1) any gross negligence, willful misconduct or illegal act on the part of any Seller Party or any Affiliate thereof or any officer, director, partner, member, employee, agent or representative of any Seller Party or any Affiliate thereof in connection with the execution and delivery of the Master Repurchase Agreement and the other Program Documents, or any certificate, report, notice, financial statement, representation, warranty or other instrument or document furnished to Buyer by any Seller Party or any Affiliate thereof in connection with the Master Repurchase Agreement or any other Program Document on the Closing Date or during the term of the Master Repurchase Agreement;

(2) any failure by Seller to fund a Future Funding when the related borrower has satisfied the conditions to be satisfied by it under the related Purchased Asset Documents with respect to such Future Funding;

(3) any claim by any Seller Party or any Affiliate thereof that, after Buyer has exercised its remedies under the Program Documents, Buyer is not the record and beneficial owner of, and did not acquire good and marketable title to, each Purchased Asset in accordance with the Program Documents;

(4) any breach of any representations and warranties made by a Seller Party contained in any Program Document relating to Environmental Laws, or any loss, damage, cost or expense in connection with the violation of any environmental law, the correction of any environmental condition, or the removal of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law, in each case in any way affecting Seller's properties or any of the Purchased Assets;

(5) any recharacterization by any court of (i) any prior transfer of a Purchased Asset to Seller by any Affiliate of Seller or Guarantor or (ii) any intermediate transfers of a Purchased Asset between one or more Affiliates of Seller or Guarantor prior to such Purchased Asset being transferred to Seller, in each case, as something other than a true sale or true contribution;

(6) Guarantor or Seller or any Affiliate of any of the foregoing seeks to contest, challenge, deny or repudiate: (a) any right or remedy of Buyer under any of the Program Documents or (b) any Lien, security interest or control granted under or in connection with the Program Documents, Collateral or any Purchased Asset, in each case, if and to the extent that such contest, challenge, denial or repudiation by Guarantor, Seller or Affiliate thereof is found to have been taken in bad faith by final order of a court of competent jurisdiction; or

(7) any intentional misappropriation or misapplication of any funds related to any of the Program Documents by Guarantor, Pledgor, Seller, any Affiliated Originator or any Affiliate of any of the foregoing.

(c) Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty may not be revoked by Guarantor and shall continue to be effective with respect to any Guaranteed Obligations arising or created after any attempted revocation by Guarantor. This Guaranty may be enforced by Buyer and any successor, endorsee, permitted transferee or permitted assignee under the Master Repurchase Agreement and shall not be discharged by the assignment or negotiation of all or part thereof in compliance with the Program Documents.

(d) Satisfaction of Guaranteed Obligations. Guarantor shall satisfy its obligations hereunder without demand, presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate the maturity, notice of acceleration of the maturity or any other notice whatsoever. The obligations of Guarantor hereunder shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Seller, or any other party, against Buyer or against the payment of the Guaranteed Obligations, other than the payment of the Guaranteed Obligations, whether such offset, claim or defense arises in connection with such Guaranteed Obligations or otherwise.

(e) No Duty to Pursue Others. It shall not be necessary for Buyer (and Guarantor hereby waives any rights which Guarantor may have to require Buyer), in order to enforce the obligations of Guarantor hereunder, first to (i) institute suit or exhaust its remedies against Seller or others liable on the Guaranteed Obligations or any other person, (ii) enforce or exhaust Buyer's rights against any collateral which shall ever have been given to secure the Guaranteed Obligations, (iii) join Seller or any others liable on the Guaranteed Obligations in any action seeking to enforce this Guaranty or (iv) resort to any other means of obtaining payment of the Guaranteed Obligations. Buyer shall not be entitled to actually receive payment of the same amounts from both Seller and Guarantor. Buyer shall not be required to mitigate damages or take any other action to collect or enforce the Guaranteed Obligations.

(f) Waivers. Guarantor agrees to the provisions of the Program Documents, and hereby waives notice of (i) any loans or advances made by Buyer to Seller or the purchase of any Purchased Asset by Buyer from Seller, (ii) acceptance of this Guaranty, (iii) any amendment or extension of the Master Repurchase Agreement or of any other Program Documents, (iv) the execution and delivery by Seller and Buyer of any other agreement or of Seller's execution and delivery of any other documents arising under the Program Documents or in connection with the Guaranteed Obligations, (v) the occurrence of any breach by Seller or an Event of Default under the Program Documents, (vi) Buyer's transfer or disposition of the Program Documents, or any part thereof in compliance with the Program Documents, (vii) sale or foreclosure (or posting or advertising for sale or foreclosure) of any collateral for the Guaranteed Obligations, (viii) protest, proof of non-payment or default by Seller, (ix) any other action at any time taken or omitted by Buyer and (x) all other demands and notices of every kind in connection with this Guaranty, the Program Documents and any documents or agreements evidencing, securing or relating to any of the Guaranteed Obligations.

(g) Payment of Expenses. In the event that Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor shall, within three (3) Business Days after demand by Buyer, pay Buyer all costs and expenses (including, without limitation, the reasonable fees and expenses of external counsel) actually incurred by Buyer in the enforcement hereof or the preservation of Buyer's rights hereunder. The covenant contained in this Article II(g) shall survive the payment and performance of the Guaranteed Obligations.

(h) Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Buyer must rescind or restore any payment, or any part thereof, received by Buyer in satisfaction of the Guaranteed Obligations, as set forth herein, any prior release or discharge from the terms of this Guaranty given to Guarantor by Buyer shall be without effect, and this Guaranty shall remain in full force and effect. It is the intention of Seller and Guarantor that Guarantor's obligations hereunder shall not be discharged except by Seller's or Guarantor's payment and performance of the Guaranteed Obligations which is not so rescinded or Guarantor's performance of such obligations and then only to the extent of such performance.

(i) Deferral of Subrogation, Reimbursement and Contribution. Notwithstanding anything to the contrary contained in this Guaranty, Guarantor hereby unconditionally and irrevocably defers any and all rights it may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating Guarantor to the rights of Buyer), to assert any claim against or seek contribution, indemnification or any other form of reimbursement from Seller or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by Guarantor under or in connection with this Guaranty until payment in full of the Guaranteed Obligations and termination of the Master Repurchase Agreement. Guarantor hereby subordinates all of its subrogation rights against Seller arising from payments made under this Guaranty to the full payment of the Guaranteed Obligations due Buyer for a period of ninety-one (91) days following the final payment of the last of all of the Guaranteed Obligations and termination of the Master Repurchase Agreement. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the

Guaranteed Obligations shall not have been paid in full, such amount shall be held by Guarantor in trust for Buyer, segregated from other funds of Guarantor, and shall, forthwith upon receipt by Guarantor, be turned over to Buyer in the exact form received by Guarantor (duly indorsed by Guarantor to Buyer, if required), to be applied against the Guaranteed Obligations, whether matured or unmatured, in such order as Buyer may determine.

(j) Seller. The term "Seller" as used herein shall include any new or successor corporation, limited liability company, association, partnership (general or limited), joint venture, trust or other individual or organization formed as a result of any merger, reorganization, sale, transfer, devise, gift or bequest of Seller or any interest in Seller.

(k) No Waiver. Nothing herein shall be deemed to be a waiver of any right which Buyer may have under Section 506(a), 506(b), 1111(b) or any other provision of the Bankruptcy Code to file a claim for the full amount of the indebtedness secured by the Master Repurchase Agreement or to require that all collateral shall continue to secure all of the indebtedness owing to Buyer in accordance with the Master Repurchase Agreement or any other Program Documents.

**ARTICLE III.  
EVENTS AND CIRCUMSTANCES NOT REDUCING  
OR DISCHARGING GUARANTOR'S OBLIGATIONS**

Guarantor hereby consents and agrees to each of the following, and agrees that Guarantor's obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, except to the extent required by the terms hereof, and waives any common law, equitable, statutory or other rights (including without limitation, except to the extent required by the terms hereof, rights to notice) which Guarantor might otherwise have as a result of or in connection with any of the following:

(a) Modifications. Any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Master Repurchase Agreement, the other Program Documents (other than this Guaranty), or any other document, instrument, contract or understanding between Seller and Buyer, or any other parties, pertaining to the Guaranteed Obligations.

(b) Adjustment. Any adjustment, indulgence, forbearance or compromise that might be granted or given by Buyer to Seller.

(c) Condition of Seller or Guarantor. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Seller, Guarantor or any other party at any time liable for the payment of all or part of the Guaranteed Obligations or any dissolution of Seller or Guarantor, or any sale, lease or transfer of any or all of the assets of Seller or Guarantor, or any changes in the shareholders, partners or members of Seller or Guarantor; or any reorganization of Seller or Guarantor.



(d) Invalidity of Guaranteed Obligations. The invalidity, illegality or unenforceability against Seller of all or any part of the Master Repurchase Agreement or any document or agreement executed in connection with the Guaranteed Obligations, for any reason whatsoever, including without limitation the fact that (i) the act of creating the Guaranteed Obligations or any part thereof is ultra vires, (ii) the officers or representatives executing the Master Repurchase Agreement or the other Program Documents or otherwise creating the Guaranteed Obligations acted in excess of their authority, (iii) Seller has valid defenses (other than payment of the Guaranteed Obligations), claims or offsets (whether at law, in equity or by agreement) which render the Guaranteed Obligations wholly or partially uncollectible from Seller, (iv) the creation, performance or repayment of the Guaranteed Obligations (or the execution, delivery and performance of any document or instrument representing part of the Guaranteed Obligations or executed in connection with the Guaranteed Obligations, or given to secure the repayment of the Guaranteed Obligations) is illegal, uncollectible or unenforceable or (v) the Master Repurchase Agreement, or any of the other Program Documents have been forged or otherwise are irregular or not genuine or authentic, it being agreed that Guarantor shall remain liable hereon regardless of whether Seller or any other person is found not liable on the Guaranteed Obligations or any part thereof for any reason.

(e) Release of Obligors. Any full or partial release of the liability of Seller on the Guaranteed Obligations, or any part thereof, or of any co-guarantors, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Guaranteed Obligations, or any part thereof, it being recognized, acknowledged and agreed by Guarantor that Guarantor may be required to pay the Guaranteed Obligations in full without assistance or support of any other party, and Guarantor has not been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement, as between Buyer and Guarantor, that other parties will be liable to pay or perform the Guaranteed Obligations, or that Buyer will look to other parties to pay or perform the obligations of Seller under the Master Repurchase Agreement or the other Program Documents.

(f) Other Collateral. The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Guaranteed Obligations.

(g) Release of Collateral. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) by any party other than Buyer of any collateral, property or security at any time existing in connection with, or assuring or securing payment of, all or any part of the Guaranteed Obligations.

(h) Care and Diligence. Except to the extent the same shall result from the gross negligence or willful misconduct of Buyer, the failure of Buyer or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security, including but not limited to any neglect, delay, omission, failure or refusal of Buyer (i) to take or prosecute any action for the collection of any of the Guaranteed Obligations or (ii) to foreclose, or initiate any action to foreclose, or, once commenced, prosecute to completion any action to foreclose upon any security therefor, or (iii) to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations.

(i) Unenforceability. The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Guaranteed Obligations, or any part thereof, shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any of the collateral for the Guaranteed Obligations.

(j) Offset. The liabilities and obligations of Guarantor to Buyer hereunder shall not be reduced, discharged or released because of or by reason of any existing or future right of offset, claim or defense (other than payment of the Guaranteed Obligations) of Seller against Buyer, or any other party, or against payment of the Guaranteed Obligations, whether such right of offset, claim or defense arises in connection with the Guaranteed Obligations (or the transactions creating the Guaranteed Obligations).

(k) Merger. The reorganization, merger or consolidation of Seller into or with any other corporation or entity.

(l) Preference. Any payment by Seller to Buyer is held to constitute a preference under bankruptcy laws, or for any reason Buyer is required to refund such payment or pay such amount to Seller or someone else.

(m) Other Actions Taken or Omitted. Except to the extent the same shall result from the gross negligence or willful misconduct of Buyer, any other action taken or omitted to be taken with respect to the Program Documents, the Guaranteed Obligations, or the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Guaranteed Obligations pursuant to the terms hereof, it is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay the Guaranteed Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, which obligation shall be deemed satisfied only upon the full and final payment and satisfaction of the Guaranteed Obligations.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES**

To induce Buyer to enter into the Program Documents, Guarantor represents and warrants to Buyer as follows:

(a) Benefit. Guarantor has received, or will receive, direct or indirect benefit from the execution, delivery and performance by Seller of the Program Documents, and the transactions contemplated therein.

(b) Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of Seller and is familiar with the value of any and all collateral intended to be pledged as security for the payment of the Guaranteed Obligations; however, as between Buyer and Guarantor, Guarantor is not relying on such financial condition or the collateral as an inducement to enter into this Guaranty.

(c) No Representation by Buyer. Neither Buyer nor any other party on Buyer's behalf has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty.

(d) Organization. Guarantor is (i) duly formed, validly existing and in good standing under the laws and regulations of the state of Guarantor's formation and (ii) duly licensed, qualified and in good standing in every state where such licensing or qualification is necessary for the transaction of Guarantor's business, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

(e) Authority. Guarantor has the power to own and hold the assets it purports to own and hold, and to carry on its business as now being conducted and proposed to be conducted. Guarantor is duly authorized and has the power to execute and deliver this Guaranty, to enter into the Transactions contemplated hereunder and to perform its obligations under this Guaranty, and it has taken all necessary action to authorize such execution, delivery and performance.

(f) Due Execution; Enforceability. This Guaranty has been duly executed and delivered by Guarantor for good and valuable consideration and constitutes the legal, valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with its terms, subject to bankruptcy, insolvency and other limitations on creditors' rights generally and to equitable principles.

(g) Non-Contravention; Consents. None of the execution, delivery and performance of this Guaranty, the consummation by Guarantor of the transactions contemplated by this Guaranty, nor compliance by Guarantor with the terms, conditions and provisions of this Guaranty (or any of them) will conflict with or result in a breach of any of the terms, conditions or provisions of (i) the organizational documents of Guarantor, (ii) any contractual obligation by which Guarantor is bound or the rights related to which have been assigned to Guarantor or the obligations under which have been assumed by Guarantor or to which the assets of Guarantor are subject or constitute a default thereunder, or result thereunder in the creation or imposition of any lien upon any of the assets of Guarantor, (iii) any judgment or order, writ, injunction, decree or demand of any court applicable to Guarantor, or (iv) any applicable Requirement of Law. Guarantor has obtained all necessary authorizations, licenses, permits and other consents from Governmental Authorities required in connection with this Guaranty and for the performance of its obligations under this Guaranty and such authorizations, licenses, permits and other consents are in full force and effect.

(h) Litigation; Requirements of Law. There is no action, suit, proceeding, investigation, or arbitration pending or, to the best knowledge of Guarantor, threatened against Guarantor or any of its assets which could reasonably be expected to result in any Material Adverse Change, or which could reasonably be expected to have an adverse effect on the validity of this Guaranty or any action taken or to be taken in connection with the obligations of Guarantor under this Guaranty. Guarantor is in compliance in all material respects with all Requirements of Law. Guarantor is not in default in any material respect with respect to any judgment, order, writ, injunction, decree, rule or regulation of any arbitrator or Governmental Authority.

(i) Consents. No consent, approval or other action of, or filing by Guarantor with, any Governmental Authority or any other Person is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of this Guaranty (other than consents, approvals and filings that have been obtained or made, as applicable).

(j) Judgments/Bankruptcy. Except as disclosed in writing to Buyer, there are no judgments against Guarantor or, to Guarantor's knowledge, unsatisfied of record or docketed in any court located in the United States of America and no Insolvency Event has ever occurred with respect to Guarantor.

(k) Plan Assets. None of the assets of Guarantor constitute Plan Assets.

Guarantor agrees that the foregoing representations and warranties shall be deemed to have been made by Guarantor on the date hereof, on the date of each Transaction under the Master Repurchase Agreement and on each date a Transaction is outstanding under the Master Repurchase Agreement, as though made under this Guaranty on and as of such date.

## **ARTICLE V. COVENANTS OF GUARANTOR**

Guarantor covenants and agrees with Buyer that, until payment in full of all Guaranteed Obligations and termination of the Master Repurchase Agreement:

(a) Preservation of Existence; Licenses. Guarantor shall at all times comply with all laws, ordinances, rules and regulations of any federal, state, municipal or other public authority having jurisdiction over Guarantor or any of its assets, except where a lack of such compliance would not be reasonably likely to result in a Material Adverse Change and Guarantor shall do, or cause to be done, all things reasonably necessary to preserve and maintain in full force and effect its legal existence, and all licenses material to its business.

(b) Compliance with Obligations. Guarantor shall at all times comply (i) in all material respects with its organizational documents and (ii) with any agreements by which it is bound or to which its assets are subject, except where failure to comply could not be reasonably likely to have a Material Adverse Change.

(c) Books of Record and Accounts. Guarantor shall at all times keep proper books of records and accounts in which full, true and correct entries shall be made of its transactions in accordance with GAAP, consistently applied, and set aside on its books from its earnings for each fiscal year all such proper reserves in accordance with GAAP, consistently applied.

(d) Taxes and Other Charges. Guarantor shall timely file all income, franchise and other material tax returns required to be filed by it and shall pay and discharge all taxes, levies, assessments and other charges imposed on it, on its income or profits, on any of its property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained in accordance with GAAP.

(e) Limitation on Distributions. After the occurrence and during the continuation of any Default or Event of Default or the breach of any of the financial covenants set forth in Article V(f) below on a pro forma basis, Guarantor shall not make any payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any equity interest of Guarantor, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Guarantor; provided that, during the continuation of any such Default, Event of Default or breach, (i) Guarantor may distribute the minimum amount of cash required to be distributed so that Guarantor (including its qualifying subsidiaries) can maintain its status as a “real estate investment trust” (or qualifying subsidiary, as applicable) under Sections 856 through 860 of the Code (each such distribution a “Permitted REIT Distribution”) and (ii) any such Permitted REIT Distributions will be actually used to maintain Guarantor’s status as a “real estate investment trust” under Sections 856 through 860 of the Code. On the date of any Permitted REIT Distribution, Guarantor shall deliver to Buyer a certificate signed by a responsible officer of Guarantor containing all information and calculations necessary, and taking into consideration such Permitted REIT Distribution, for determining compliance with clauses (i) and (ii) of this Article V(e).

(f) Financial Covenants. Guarantor shall at all times satisfy the following financial covenants, as determined quarterly on a consolidated basis in accordance with GAAP, consistently applied:

(i) Adjusted Tangible Net Worth. Guarantor shall not permit its Adjusted Tangible Net Worth at any time to be less than an amount equal to seventy-five percent (75%) of the net cash proceeds of any equity issuance by Guarantor from and after its date of formation, plus an amount equal to seventy-five percent (75%) of the Net Available Capital Commitments, minus seventy-five percent (75%) of the amounts expended for equity redemptions or repurchases by Guarantor from and after its date of formation.

(ii) EBITDA to Interest Expense Ratio. As of the end of each fiscal quarter of Guarantor commencing with the fiscal quarter ending on December 31, 2022, the ratio of Guarantor’s EBITDA to Guarantor’s Interest Expense shall not at any time be less than 1.50 to 1.00, calculated on a trailing four-quarter basis.

(iii) Maximum Debt to Equity Ratio. Guarantor shall not permit the ratio of its Total Indebtedness to its Tangible Net Worth to be greater than 3.50 to 1.00 at any time.

(iv) Minimum Liquidity. On and after the Closing Date, Guarantor shall not permit its Liquidity to be less than the greater of (x) Fifteen Million and NO/100 Dollars (\$15,000,000.00) and (y) five percent (5.0%) of the aggregate outstanding Purchase Price of all Purchased Assets.

(v) More Favorable Agreement. If Guarantor or any of Guarantor’s Subsidiaries has entered into, or shall enter into or amend a commercial real estate repurchase agreement, warehouse facility or other similar commercial real estate lending transaction with any other repurchase buyer or lender which by its terms provides more favorable financial covenants (including related definitions) than those noted above (a “More Favorable Agreement”) then the financial covenants noted above shall be deemed to be automatically modified to such more

favorable terms as of the effective date of such More Favorable Agreement and, upon execution of such More Favorable Agreement, Guarantor shall give prompt notice in reasonable detail to Buyer of such more favorable terms. Following such notice and upon Buyer's request, Guarantor shall enter into such amendments to this Guaranty as may reasonably be required by Buyer to give effect to such more favorable terms.

If such More Favorable Agreement is subsequently amended or terminated and as a result such more favorable financial covenants are modified in favor of Guarantor or cease to apply, the then applicable financial covenants in this Guaranty shall be deemed to be automatically modified to such Guarantor-favorable terms (but not less favorable terms for Buyer than set forth herein) and, upon request of Guarantor, Buyer shall enter into such amendments to this Guaranty as may reasonably be required by Guarantor to give effect to such more favorable terms.

In no event shall this clause (v) extend to (i) any credit facility or other financing arrangement entered into by Guarantor or Pledgor (and under which Guarantor or Pledgor is a borrower or issuer, as the case may be), nor (ii) any broadly syndicated commercial real estate collateralized loan obligation transaction under which Guarantor or any of Guarantor's Subsidiaries are party, nor (iii) in the case of any transaction described in the foregoing clauses (i) or (ii), any covenants thereunder.

## **ARTICLE VI. MISCELLANEOUS**

(a) Waiver. No failure to exercise, and no delay in exercising, on the part of Buyer, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of Buyer hereunder shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Guaranty, nor consent to departure therefrom, shall be effective unless in writing signed by Buyer and Guarantor and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand (except to the extent such a notice or demand is required by the terms hereof).

(b) Set-Off. Buyer and its Affiliates are hereby authorized at any time and from time to time upon the occurrence and during the continuance of an Event of Default, without notice to Guarantor, to set-off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Buyer or any such Affiliate to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty or any other Program Document to Buyer or any of its Affiliates, irrespective of whether or not Buyer or any such Affiliate shall have made any demand under this Guaranty or any other Program Document and although such obligations of Guarantor may be contingent or unmatured or are owed to a branch or office of Buyer or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of Buyer and its Affiliates under this Article VI(b) are in addition to other rights and remedies (including other rights of setoff) that they may have. Buyer shall provide prompt written notice to Guarantor of any set-off affected under this Article VI(b), to the extent it is not prohibited from doing so by applicable law.

(c) Notices. Unless otherwise provided in this Guaranty, all notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (i) hand delivery, with proof of attempted delivery, (ii) certified or registered United States mail, postage prepaid, (iii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (iv) by email with confirmation of delivery provided that such emailed notice must also be delivered by one of the means set forth in (i), (ii) or (iii) above, to the address specified in Annex I to the Master Repurchase Agreement or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 6(c). A notice shall be deemed to have been given: (1) in the case of hand delivery, at the time of delivery, (2) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day, (3) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day, or (4) in the case of email, upon receipt of confirmation of delivery; provided that such emailed notice was also delivered as required in this Section 6(c). A party receiving a notice that does not comply with the technical requirements for notice under this Section 6(c) may elect to waive any deficiencies and treat the notice as having been properly given.

Guarantor: FS Credit Real Estate Income Trust, Inc.  
201 Rouse Boulevard  
Philadelphia, PA 19112  
Attention: Chief Financial Officer  
Telephone: (215) 495-1150  
Email: credit.notices@fsinvestments.com  
FSCREIT\_TEAM@fsinvestments.com

(d) GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY LAWS, RULES OR PROVISIONS OF THE STATE OF NEW YORK THAT WOULD CAUSE THE APPLICATION OF THE LAWS, RULES OR PROVISIONS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK.

(e) SUBMISSION TO JURISDICTION; WAIVERS.

(i) Guarantor irrevocably and unconditionally (A) submits to the exclusive jurisdiction of any United States federal or New York State court sitting in Manhattan, and any appellate court from any such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under this Guaranty or relating in any way to this Guaranty, the Master Repurchase Agreement or any Transaction under the Master Repurchase Agreement and (B) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile.

(ii) To the extent that Guarantor has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, Guarantor hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under this Guaranty or relating in any way to the Master Repurchase Agreement or any Transaction under the Master Repurchase Agreement.

(iii) Guarantor hereby irrevocably consents to the service of any summons and complaint and any other process by the mailing of copies of such process to it at its addresses specified herein. Guarantor hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 6(e)(iii) shall affect the right of Buyer to serve legal process in any other manner permitted by law or affect the right of Buyer to bring any action or proceeding against Guarantor or its property in the courts of other jurisdictions.

(iv) GUARANTOR HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS GUARANTY, ANY OTHER PROGRAM DOCUMENT OR ANY INSTRUMENT OR DOCUMENT DELIVERED HEREUNDER OR THEREUNDER.

(f) Invalid Provisions. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

(g) Amendments. This Guaranty may be amended only by an instrument in writing executed by Guarantor and Buyer.

(h) Parties Bound; Assignment; Joint and Several. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives; provided, however, that Guarantor may not, without the prior written consent of Buyer, assign any of its rights, powers, duties or obligations hereunder. If Guarantor consists of more than one person or party, the obligations and liabilities of each such person or party shall be joint and several. Buyer may assign or transfer its rights under this Guaranty in accordance with the transfer of assignment provisions of the Master Repurchase Agreement.

(i) Headings. Section headings are for convenience of reference only and shall in no way affect the interpretation or construction of this Guaranty.



(j) Recitals. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Guaranty and shall be considered prima facie evidence of the facts and documents referred to therein.

(k) Rights and Remedies. If Guarantor becomes liable for any indebtedness owing by Seller to Buyer, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby and the rights of Buyer hereunder shall be cumulative of any and all other rights that Buyer may ever have against Guarantor. The exercise by Buyer of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy.

(l) Entirety. This Guaranty embodies the final, entire agreement of Guarantor and Buyer with respect to Guarantor's guaranty of the Guaranteed Obligations and supersedes any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof. This Guaranty is intended by Guarantor and Buyer as a final and complete expression of the terms of the guaranty, and no course of dealing between Guarantor and Buyer, no course of performance, no trade practices, and no evidence of prior, contemporaneous or subsequent oral agreements or discussions or other extrinsic evidence of any nature shall be used to contradict, vary, supplement or modify any term of this Guaranty. There are no oral agreements between Guarantor and Buyer relating to the subject matter hereof.

(m) Intent. Guarantor acknowledges and agrees with the provisions set forth in Section 22 of the Repurchase Agreement. Guarantor intends and agrees that (a) this Guaranty is "a security agreement or arrangement or other credit enhancement" that is "related to" and provided "in connection with" the Repurchase Agreement and each Transaction thereunder is within the meaning of Section 741(7)(A)(xi) of Bankruptcy Code and is, therefore, a "securities contract" as that term is defined in Section 741 (7)(A)(xi) of the Bankruptcy Code, (b) the Buyer's right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with the Repurchase Agreement and this Guaranty is in each case a contractual right to cause the termination, liquidation or acceleration of, or to offset net termination values, payment amounts or other transfer obligations arising under or in connection with this Guaranty as described in Section 555 of the Bankruptcy Code, (c) any payment or transfer of property made with respect to this Guaranty shall be considered unavoidable "margin payment" or "settlement payment" as such terms are used in Section 546(e) and defined Sections 741(5) and (8) of the Bankruptcy Code and (d) damages hereunder shall be measured in accordance with Section 562 of the Bankruptcy Code. This Guaranty is part of an integrated, simultaneously closing suite of secured financial contracts that relate to the Repurchase Transaction under the Repurchase Agreement. Guarantor agrees that it shall not challenge, and hereby waives to the fullest extent available under applicable law its right to challenge, the characterization of this Guaranty, the Repurchase Agreement or any Transaction thereunder as a "securities contract" within the meaning of the Bankruptcy Code.

(n) Electronic Signatures. This Guaranty may be executed in counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Guaranty in Portable Document Format (PDF) or by facsimile shall be effective as delivery of a manually executed original counterpart of this Guaranty. The parties agree that this Guaranty, any addendum or amendment hereto or any other document necessary for the

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consummation of the transactions contemplated by this Guaranty may be accepted, executed or agreed to through the use of an electronic signature in accordance with the E-Sign, the Uniform Electronic Transactions Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any secure third-party electronic signature capture service providers with appropriate document access tracking, electronic signature tracking and document retention as may be approved by Buyer in its sole discretion.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned executed this Guaranty as of the day first written above.

**FS CREDIT REAL ESTATE INCOME  
TRUST, INC., as Guarantor**

By: /s/ Edward T. Gallivan

Name: Edward T. Gallivan

Title: Chief Financial Officer

## FINANCIAL COVENANT DEFINITIONS

“Adjusted Tangible Net Worth” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, an amount equal to the sum of such person’s Tangible Net Worth plus such person’s Net Available Capital Commitments.

“Capitalized Lease Obligations” shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Guaranty, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Cash and Cash Equivalents” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, any of the following: (a) cash (other than Restricted Cash), (b) fully federally insured demand deposits, and (c) securities with maturities of thirty (30) days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof.

“Contingent Liabilities” shall mean, with respect to any Person as of any date of determination, all of the following as of such date: (a) liabilities and obligations (including any guarantees) of such Person in respect of “off-balance sheet arrangements” (as defined in the Off-Balance Sheet Rules defined below), (b) obligations, including guarantees, whether or not required to be disclosed in the footnotes to such Person’s financial statements, guaranteeing in whole or in part any non-recourse Indebtedness, lease, dividend or other obligation, excluding, however, (i) contractual indemnities (including any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets), and (ii) guarantees of non-monetary obligations which have not yet been called on or quantified, of such Person or any other Person, and (c) forward commitments or obligations to fund or provide proceeds with respect to any loan or other financing that is obligatory and non-discretionary on the part of lender. The amount of any Contingent Liabilities described in the preceding clause (b) shall be deemed to be (i) with respect to a guarantee of interest or interest and principal, or operating income guarantee, the sum of all payments required to be made thereunder (which, in the case of an operating income guarantee, shall be deemed to be equal to the debt service for the note secured thereby), through (x) in the case of an interest or interest and principal guarantee, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (y) in the case of an operating income guarantee, the date through which such guarantee will remain in effect, and (ii) with respect to all guarantees not covered by the preceding clause (i), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and in the footnotes to the most recent financial statements of such Person. “Off-Balance Sheet Rules” means the Disclosure in Management’s Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Securities Act Release Nos. 33-8182; 34-47264; FR-67 International Series Release No. 1266 File No. S7-42-02, 68 Fed. Reg. 5982 (Feb. 5, 2003) (codified of 17 CFR Parts 228, 229 and 249).

“EBITDA” shall mean, with respect to any Person and its consolidated Subsidiaries, for any period of four consecutive fiscal quarters ended on the last day of any fiscal quarter of such Person, an amount equal to, without duplication, (a) Net Income (or loss) of such Person, plus (b) the following (but only to the extent actually deducted in calculating such Net Income (or loss)): (i) depreciation and amortization expense, (ii) Interest Expense, (iii) income tax expense, (iv) extraordinary or non-cash non-recurring losses and (v) transaction costs in connection with the Program Documents, and minus (c) the following (but only to the extent actually added in calculating such Net Income (or loss)): extraordinary or non-cash non-recurring gains; determined, in each case, on a consolidated basis.

“FS Shareholder” shall mean Franklin Square Holdings, L.P., a Pennsylvania limited partnership, together with its successors and permitted assigns.

“Indebtedness” shall mean, for any Person, without duplication (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within ninety (90) days of the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a lien on the property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person; (e) obligations of such Person under repurchase agreements, sale/buy-back agreements or like arrangements; (f) indebtedness of others guaranteed by such Person; (g) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (h) Recourse Indebtedness of such Person; (i) indebtedness of general partnerships of which such Person is secondarily or contingently liable (other than by endorsement of instruments in the course of collection), whether by reason of any agreement to acquire such indebtedness to supply or advance sums or otherwise; (j) Capitalized Lease Obligations of such Person; and (k) all net liabilities or obligations under any interest rate, interest rate swap, interest rate cap, interest rate floor, interest rate collar, or other hedging instrument or agreement.

Notwithstanding the foregoing, Indebtedness of a Person shall not include Indebtedness of any Person arising pursuant to real estate mortgage investment conduits or other similar securitization transactions (“Securitization Indebtedness”) that are not issued by Guarantor, Affiliates of Guarantor, FS Real Estate Advisor, LLC and/or Affiliates of FS Real Estate Advisor, LLC (e.g., commercial real estate CLOs) where such Securitization Indebtedness would appear on such first Person’s consolidated balance sheet solely as a result of the consolidation of “variable interest entities” under the requirements of the Accounting Standards Codification Section 810, as amended, modified or supplemented from time to time; provided that for purposes of this clause a Person shall not be considered an Affiliate of another Person solely as a result of owning the most subordinate class(es) of any Securitization Indebtedness issued by such other Person.

“Interest Expense” shall mean, with respect to any Person and its consolidated Subsidiaries in respect of any period of four consecutive fiscal quarters, ended on the last day of any fiscal quarter of such Person, determined on a consolidated basis without duplication, consolidated interest expense of such Person and its consolidated Subsidiaries, whether paid or accrued, without deduction of consolidated interest income of such Person and its consolidated Subsidiaries, as determined in accordance with GAAP.

“Liquidity” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, an amount equal to the sum of (i) the unrestricted and unencumbered, other than pursuant to the Program Documents, Cash and Cash Equivalents (including, without limitation, Cash and Cash Equivalents held by Seller) held by such Person as of such date, (ii) the aggregate amount of all unfunded investor capital commitments of such Person, if any, that are available to be called on without condition (other than customary notice conditions or as otherwise set forth in the subscription or other relevant agreements of such Person) and are not pledged to any other Person or subject to any Lien (other than pursuant to a subscription financing line of credit), net of amounts outstanding under any subscription financing line of credit of such Person or any of its consolidated Subsidiaries and (iii) the aggregate amount of all unfunded lender commitments to such Person, if any, that are available to be called on without condition (other than customary credit facility conditions).

“Net Available Capital Commitments” shall mean, as of any date of determination with respect to Guarantor, calculated, without duplication and determined on an aggregate basis, the amount of any unfunded, unencumbered and uncalled capital commitments in favor of Guarantor and callable as of right by Guarantor pursuant to such other subscription agreements as Buyer may hereafter approve by notice to Guarantor (such approval not to be unreasonably withheld, conditioned or delayed), but in each case only to the extent that each such capital commitment (a) is from either FS Shareholder or Rialto Shareholder, but only to the extent that each such entity (x) is not subject to an Insolvency Event, and (y) has not previously failed to fund any other capital call under a partnership agreement, subscription agreement or another similar agreement, (b) is payable in cash, and (c) is readily available to be called by Guarantor without condition from time to time other than customary notice and similar administrative conditions.

“Net Income” shall mean, with respect to any Person and its consolidated Subsidiaries for any period of four consecutive fiscal quarters ended on the last day of any fiscal quarter of such Person, the sum of all the net income of such Person and its consolidated Subsidiaries determined in accordance with GAAP and in each case, determined on a consolidated basis without duplication.

“Net Worth” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, all amounts that would be included under capital or shareholder’s equity (or any like caption) on a consolidated balance sheet of such Person and its consolidated Subsidiaries pursuant to GAAP.

“Recourse Indebtedness” shall mean, for any Person on any date, without duplication, the indebtedness of such Person (and its Subsidiaries) for which such Person (and its Subsidiaries) is directly responsible or liable as obligor or guarantor (excluding contingent obligations arising by reason of customary recourse carve-outs under a non-recourse instrument, including, but not limited to, fraud, misappropriation and misapplication, and environmental indemnities, and for the avoidance of doubt, including actual obligations arising by reason of any such customary recourse carve outs under a non-recourse instrument.

“Restricted Cash” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, any amount of cash of such Person and its consolidated Subsidiaries that is either encumbered with a prior lien or claim or is contractually required to be set aside, segregated or otherwise reserved.

“Rialto Shareholder” shall mean Rialto Investments, LLC, a Delaware limited liability company, together with its successors and permitted assigns.

“Tangible Net Worth” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, the Net Worth of such Person and its consolidated Subsidiaries, minus (a) to the extent already included in the calculation of Tangible Net Worth, amounts owing to such Person or any of its consolidated Subsidiaries from any affiliate thereof, or from officers, employees, partners, members, directors, shareholders or other Persons similarly affiliated with such Person or any Subsidiary or Affiliate thereof, (b) intangible assets as determined in accordance with GAAP, and (c) prepaid taxes and/or expenses, all on or as of such date and all determined, in each case, on a consolidated basis without duplication.

“Total Indebtedness” shall mean, with respect to any Person and its consolidated Subsidiaries on any date, without duplication, all amounts of consolidated Indebtedness (other than Contingent Liabilities not reflected on such Person’s consolidated balance sheet), plus the proportionate share of all Indebtedness (other than Contingent Liabilities not reflected on such Person’s consolidated balance sheet) of all non-consolidated Subsidiaries and minority interests of such Person, on or as of such date.